

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Application for a Compliance Order :
 Certificate by CoxCom, Inc. : Docket No. D-00-C-5

REPORT AND ORDER

1. INTRODUCTION

On April 20, 2000, CoxCom, Inc., d/b/a Cox Communications (“Cox” or “Company”), 9 J.P. Murphy Highway, West Warwick, Rhode Island, filed an application with the Rhode Island Division of Public Utilities and Carriers (“Division”) seeking authority to construct and operate a Competitive Community Antenna Television System (“CATV” or “cable television company”) in Rhode Island’s CATV Service Area 5. Service Area 5 is comprised of the towns of Barrington, Bristol and Warren.

Cox’s application was filed pursuant to Rhode Island General Laws, Section 39-19-3 and the Division’s “*Rules Governing Community Antenna Television Systems*” (“Rules”).

Following the docketing of the Cox application, the Division received motions to intervene from the Rhode Island Department of Attorney General (“Attorney General”); Full Channel TV, Inc. (“Full Channel”) 57 Everett Street, Warren, Rhode Island; Representative Nicholas Gorham, on behalf of the District 53 town of Foster and Mr. Kirk Badeau, Potter Road, Foster, Rhode Island; the New England Cable Television Association, Inc. (“NECTA”), 100 Grandview Road, Suite 310, Braintree,

Massachusetts; and American Broadband of Rhode Island, Inc. (“ABI”), P.O. Box 412, Providence, Rhode Island.¹

The Division subsequently scheduled and conducted a prehearing conference on September 20, 2000. A procedural and hearing schedule was established at the September 20, 2000 prehearing conference. The Division’s Advocacy Section (“Advocacy Section”), an indispensable party, also entered an appearance in the instant docket at that time.

Upon receipt of the motion to intervene filed by Mr. Kirk Badeau and Representative Gorham, Cox and NECTA both filed written objections. In response to the objections raised by Cox and NECTA, the Division conducted a hearing on September 28, 2000, for the limited purpose of hearing oral arguments relative to the issue of Mr. Badeau’s and Representative Gorham’s (the “Movants”) motion to intervene. The Division subsequently concluded that the Movants lacked standing to intervene in this docket (see Order No. 16402, issued on October 3, 2000).

2. SUMMARY OF COX APPLICATION

Cox’s application included eleven sections of information which directly parallel the informational filing requirements set forth in Section 3.3(c) of the Division’s Rules. A summary of this information, along with a corresponding reference to the specific Division Rule is provided below:

¹ The five motions to intervene were filed with the Division on the following dates: Attorney General on May 9, 2000; Full Channel on August 30, 2000; Representative Gorham and Mr. Kirk Badeau on September 7, 2000; and NECTA and ABI on September 8, 2000.

A. Section 3.3(c)(1) – System Architecture and Channel Capacity:

According to Cox’s application, the Company is prepared to construct a state-of-the-art “Full Service Network” (“FSN”) platform in the communities of Barrington, Bristol and Warren (Cox Exhibit 1, p. 5). The Company indicates that its FSN platform will be designed to support a variety of services, based on community and market needs, including traditional broadcast analog video, digital video, high-speed data, and digital telephony services (Id.).

Cox proposes to serve its network from two “Secondary Telecommunications Centers” (“STC”) or head-ends, one located in Pawtucket and one in Portsmouth, which are both optically linked to the Cox “Master Telecommunications Center” (“MTC”) in West Warwick (Id.). Cox explains that this configuration provides maximum possible reliability by using two routes for signals to be delivered from each head-end site. The local distribution of signals will be accomplished using a “Hybrid Fiber-Coax” (“HFC”) sub-split network design with a total of 750 MHz of bandwidth available to deliver a mix of one-way and two-way services (Id.). The system will be established to support up to 78 analog channels and/or 200 or more digital television channels along with high-speed data and telephone services.

The Company states that the HFC approach takes advantage of optical fiber-based technologies to feed small nodes or serving cells of approximately 750 homes in each community depending on the density of the area being served. Cox explains that each node area will be served via two diverse fiber routes to maximize service reliability and subsequent coaxial cascades will often be limited to no more than six active devices to ensure maximum signal and service performance.

Cox also indicates that the FSN architecture, power supply, generator and node points that it will construct and operate in Service Area 5 will all be monitored on a constant basis from Cox's "Network Operations Center" ("NOC") in Atlanta, Georgia and from its local "Systems Communications Center" in West Warwick.

Cox also plans to utilize its West Warwick location to collect and manage the majority of signal feeds for Service Area 5. The Company explains that the West Warwick signal feeds will in turn be linked to the Company's STCs in Pawtucket and Portsmouth. Through the STCs, Cox will also be able to utilize local channel insertion for downstream and upstream channel reception, as well as playback of public, education and government-access ("PEG") programming.

The Company further explains that it plans to deploy spare fibers on its HFC network for future expansion and to support other access technologies for large user, commercial and institutional network capabilities. Cox identifies the other access technologies as "fiber fed Digital Loop carrier systems, Synchronous Optical Networks ("SONET"), Native Asynchronous Transfer Mode, and Telephone Access Node technologies" (Id., pp. 5-6).

B. Section 3.3(c)(2) Programming Services:

The Company states that, as a result of its statewide system upgrade, it can offer "a robust" programming line-up to Service Area 5 (Id., p. 7). Cox describes its programming line-up as consisting of: 77 channels of analog video service; a digital line-up that includes over 100 additional programming options; 40 commercial-free CD-quality audio channels; Starsight Navigator, an interactive program guide; and access to dozens of premium and pay-per-view channels. Detailed descriptions of

Cox's channel line-ups for Providence and Newport were provided for informational purposes (Id., "Exhibit B" and "Exhibit C", respectively).

Cox also represents that it strongly supports PEG access and local origination programming. The Company notes that it currently manages ten public access studios, with an annual financial commitment of approximately \$1.6 million. Cox indicates that it will extend the same commitment to a PEG access program to Service Area 5 (Id.).

C. Section 3.3(c)(3) – Description of Proposed System and Operations:

1. General Area for Location of Headend and Antennas

In describing the location of its headends and antennas, Cox reiterated much of the information previously provided regarding its system architecture, supra.

2. Service Capability

The Company explains that its FSN has been designed to support multiple transport layers within the 750 MHz spectrum on the HFC network to ensure that traditional video services run efficiently alongside cable modems, digital telephone services and intelligent digital set-top boxes (Id., p. 9). Cox states that these capabilities can be augmented with other access technologies that can operate over unused embedded filters in each node. According to Cox, the other access technologies will provide a true FSN platform that provides a multi-layered, multi-functional platform that will support a number of service capabilities (Id., p. 9).

Cox represents that its FSN platform will support the following service capabilities:

Cox Basic and Premium Video Services – These include a high quality selection of traditional CATV basic and premium selections and provides over 78 analog channels that works with existing television sets. It includes Pay-Per-View capabilities, an on-screen television guide, and multiple channels of premium services such as HBO. Cox will also use this technology to continue to support carriage of local, education and government access channels; the statewide Interconnect; local origination and local broadcast stations. Cox will also continue to support the industrywide “Cable in the Classroom” initiatives with these services via the HFC network.

Cox Digital Television – The digital TV offering will be provided over the HFC Network and can provide an additional 100 or more channels via the HFC network. The service works with traditional television sets equipped with a special digital converter box. Today it includes many new television channels, forty channels of digital music, expanded pay-per-view capabilities, an interactive on-screen television guide and multiplexed premium services. This service can be utilized to establish private virtual channels to specific converter boxes for private downstream video applications. At this time three digital channels have been reserved in each MTC/STC area for future video applications.

Internet Access Products – Currently available Cox products include:

- Cox @Home, an HFC-delivered Internet access product for residential applications that is provided through a partnership arrangement with Excite/@Home. It allows customers to access the Internet at speeds up to 100 times faster and no less than 10 times faster than they can provide with a standard 28.8 Kbps telephone modem. The Cox@Home product provides the same features offered by other Internet service providers, like e-mail, free web-space, and World Wide Web access. Currently Cox provides one free terminal to every public school in the service area willing to accept the service.
- Cox @Work Standard, an HFC-delivered Internet access product for one to three business users, is also provided through a partnership with Excite/@Home.
- Cox @Work Professional is an HFC product for up to 175 business users at a location. Cox @Work professional also provides the capability for customers to host their own web sites and email servers. Access speeds and pricing are very competitive with other ISPs offering service in the area.

Cox Digital Telephone Service is a competitive, full feature product that will be available as part of Cox's initial offering and will provide residential and commercial telephony services at extremely competitive rates to other telephone services available in this area today (Id., pp. 9-10).

3. Technical Specifications

Cox represents that it conforms to all technical and safety specifications as required by Part 76 of the Federal Communication Commission's (FCC) regulations, the NEC², and OSHA³, as well as applicable regional and local ordinances (Id., p. 11). Cox also proffered an exhibit that detailed the technical specifications planned for Service Area 5 (Id., "Exhibit D").

Additionally, Cox noted that its digital service platform supports the current state-of-the-art encryption technology. Cox indicated that it will continue to implement new technologies when they become "technically and fiscally viable" (Id., p. 11).

4. Provision for Expansion of Channel Capacity

Cox relates that its SONET 'ring-in-ring' architecture provides extraordinary flexibility for expansion and carriage of multiple services (Id., p. 12). Cox indicates that it has incorporated dark fiber into its ongoing reconstruction of its broadband network in Rhode Island in anticipation of future expansion. Cox also notes that continued advances in digital compression technology will continue to expand the usefulness of already activated fiber and coaxial network assets (Id.).

The Company states that it has invested more than \$300 million to build a

² National Electrical Code

³ Occupational Safety and Health Administration

broadband telecommunications infrastructure in Rhode Island. Cox asserts that the “marketplace dictated that the investment be made” (Id.). Cox relates that it will be the same competitive telecommunications marketplace that will dictate future network expansion.

5. Customer Care

Cox states that it has long recognized that customer relationships must be built on a foundation of excellent service. Accordingly, Cox relates that it is continually investing in staffing and technology in its locally-based call center, installation and service operations, and satellite payment offices. Cox also relates that it provides 24-hour service support, two-hour service and installation appointment windows and ‘no-hassle’, on-time guarantees (Id., p. 13).

Cox also provided the following information regarding the issue of customer care:

- The West Warwick call center provides access and service to customers 24 hours per day, 7 days a week;
- Cox employs a staff of over 260 customer service representatives and support staff;
- Cox employs 213 Rhode Island-based installation and service technicians;
- Cox employs 104 Connecticut-based technicians who are able to provide additional support as needed;
- Cox utilizes over 300 service vehicles in Rhode Island, which allow Cox to complete 98% of its appointments on time;

- Cox uses 10 satellite payment offices located throughout Rhode Island, which provide customers easy access for payments, equipment exchanges, sales, and scheduling of appointments; and
- Cox has received the J.D. Powers Award for customer excellence among cable companies, and has been recognized by the Cable Telecommunications Administration and Marketing Society (CTAM) and *CableVision Magazine* for its commitment to customer satisfaction (Id.).

6. Equal Employment Opportunity

Cox states that it is committed to providing equal employment opportunities to all qualified individuals without regard to race, color, religion, national origin, age, sexual orientation, gender or disability.

D. Section 3.3(c)(4) – Timetable for Completion of Construction:

Cox relates that it expects “that it will be able to significantly exceed the construction timelines contained in Section 8 of the Division’s Rules” infra, (Id., p. 15).

Cox states that it has already applied for pole attachment permits from the custodians of the poles in Service Area 5 through Cox Rhode Island Telcom, LLC (“Cox Telcom”) which is a wholly owned affiliate of Cox. Cox notes that Cox Telcom holds a statewide certificate to provide competitive local telephone service (Id.).

Cox explained that Cox Telcom is preparing to construct a broadband network in Barrington, Bristol and Warren for purposes of providing competitive local telephone service. Cox further explained that because this network is the same network used to provide cable television services, and because construction of this

network for telephony will likely occur simultaneously with the Division's review of the instant application, Cox expects the construction timetable for cable television service in Service Area 5 to be dramatically reduced (Id.). Cox predicted that the entire network would be completed by year-end 2001 (Id.).

E. Section 3.3(c)(5) – Pricing:

Cox opines that because it would enter Service Area 5 as a competitive cable provider subject to effective competition, its rates would not be subject to State or federal regulation (Id., p. 16). Cox did note, however, that the rates for cable service in Service Area 5 would be consistent with its other Rhode Island Service Areas (Id.).

F. Section 3.3(c)(6) – Commitment to Provide Connections and Service to Public Buildings:

Cox relates that it is in compliance with Rule 7.3, in that it currently provides standard video installation and standard service (Basic and Expanded Services), for free, to police and fire stations; municipal buildings; public and private hospitals; public libraries; public, parochial and private schools, universities and colleges; and religious institutions. Cox will extend this commitment for free video services to Service Area 5 (Id., p. 17).

G. Section 3.3(c)(7) – Qualifications and Experience:

On the issue of qualifications and experience, Cox proffered education and work experience information on its Vice President and General Manager of its New England operations, Mr. Greg Bicket (Id., p. 18).

Cox also provided information on other members of its senior New England management team. The names, positions and years of experience of these

individuals are reflected below:

<u>Name</u>	<u>Title</u>	<u>Years of Experience</u>
Mark Scott	Vice President, Business Services	27
Doreen Studley	Vice President, Marketing	15
Paul Cronin	Vice President, Customer Care	17
Scott Hightower	Vice President, Consumer Broadband Services	11
Jennifer Marrapese	Vice President, Regulatory Affairs	6
Kim Mullaney	Vice President, Human Resources	6
Alan Gardner	Acting Vice President, Network Development	18
Brad Shipp	Director, Information Technology	10
John Wolfe	Vice President, Government and Public Affairs	12 (<u>Id.</u>)

H. Section 3.3(c)(8) – Current Cable Television and Other Media Holdings:

Cox recounts that it is among the nation's five largest multiple system operators (MSOs), with approximately 6.1 million cable television customers nationwide. It also reports that it has made substantial investments in cable television networks as a means of generating interest among consumers.

Cox proffered the following charts to detail its cable television holdings and programming investments:

<u>Top 15 Local and Regional Clusters</u>	<u>Basic Customers</u>
Phoenix, AZ	617,615
San Diego, CA	513,673
New England	431,871
Hampton Roads, VA	411,738
Las Vegas, NV	339,968
New Orleans, LA	264,286
Northern Virginia	261,821

Oklahoma City, OK	234,827
Orange County, CA	232,058
Omaha, NE	173,010
Wichita, KS	164,240
Tulsa, OK	159,402
Fort Walton/Pensacola, FL	150,901
Tucson, AZ	<u>132,272</u>
Subtotal – Top Fifteen Local & Regional Clusters	<u>4,244,708</u>

Other Local and Regional Clusters:

Arkansas	295,729
California	156,333
Florida	89,821
Georgia	72,478
Louisiana	239,396
Kansas	143,139
North Carolina	95,813
Ohio	74,972
Oklahoma	86,995
Texas	496,073
Virginia	57,783
Idaho	10,050
Mississippi	13,206
Other	<u>25,923</u>
Subtotal – Other Local & Regional Clusters	<u>1,857,711</u>

Total Basic Customers **6,102,419** (Id., p. 19)

<u>Investment</u>	<u>Cox Ownership Interest</u>
Discovery Communications, Inc.	24.6%
GEMS Television	50.0%
In Demand, L.L.C.	11.1%
Music Choice	13.6%
Outdoor Life Network	33.0%
Product Information Network	45.0%
Speedvision Network	32.7% (<u>Id.</u> p. 20)

I. Section 3.3(c)(9) – Statement of Ownership:

Cox states that it is a wholly owned subsidiary of Cox Communications, Inc., a Delaware corporation with its principal offices at 1400 Lake Hearn Drive, Atlanta, Georgia. The petition identifies Cox Communications, Inc. as a public company, with its shares traded on the New York Stock Exchange. According to the petition, Cox Enterprises, Inc., a privately held corporation, also based in Atlanta, owns 65.7 percent of Cox Communications, Inc.’s common stock and 76.4 percent of Cox Communications, Inc.’s voting stock.

J. Section 3.3(c)(10) – Financial Plan:

Cox states that its initial capital investment in Service Area 5 will be approximately \$11 million. Cox projects its total investment over the first 10 years of operations to exceed \$19 million (Id., p. 22). Cox relates that it will finance the capital requirements from operating cash flows (Id.).

Cox also proffered copies of its 1999 Annual Report and its most recent Form 10-K filing with the Securities and Exchange Commission as supplemental financial information regarding the Company (Id., “Exhibit E” and “Exhibit F”, respectively).

K. Section 3.3(c)(11) – Statement that Public Interest is Served by the Application:

Cox asserts that: “[b]oth the public interest and the interests of consumers in Barrington, Bristol and Warren will be served by granting Cox Communications’ request to provide cable television service in Service Area 5” (Id., p. 23). In support of this claim, the Company notes that it receives requests on a regular basis from residents within Service Area 5 seeking its services. Cox states that if the instant

application is granted, it will be able to bring its “innovative services” and “strong customer service performance” to the residents of Service Area 5 (Id.).

3. REGULATORY RESPONSE TO COX’S APPLICATION FILING

In Rhode Island, prospective cable television companies must satisfy a three-phase regulatory process before CATV services may actually be provided to subscribers. Each time an applicant successfully completes one of the three regulatory phases, it receives a particular type of “certificate”, issued by the Division. The three certificate types are identified and defined below:

- *Compliance Order Certificate: a certificate issued by the Administrator designating a particular applicant as grantee and holder of franchise and ownership rights to a CATV system within a specified service area. Such certificate does not constitute authority to construct or operate a CATV system.*
- *Construction Certificate: a certificate issued by the Administrator to a holder of a valid Compliance Order Certificate, authorizing construction of a CATV system which will meet specific design and operational criteria set forth in these rules and orders of the Administrator. Such certificate shall specify the information required by these rules and the laws of this state. Issuance of a Construction Certificate does not confer authority to operate a CATV system.*
- *Certificate of Authority to Operate: a certificate issued by the Administrator to a holder of a valid Construction Certificate and a valid Compliance Order Certificate, authorizing the operation of a CATV system in compliance with applicable laws, regulations, and orders of the Administrator. Such certificate shall authorize the holder to begin provision of actual service to the public. (Section 1.2 (o-q) of the Rules).*

The instant application seeks issuance of a Compliance Order Certificate, in order to complete the first phase of the regulatory process.

A. Compliance Order Certificate

Procedurally, applicants seeking a Compliance Order Certificate must file an application which, inter alia, provides complete responses to eleven informational questions contained in Section 3.3(c)(1-11) of the Division's Rules, supra. Applicants are also encouraged to submit supporting documents with their applications.

Based on the information provided in the application, and, if after public hearing and investigation, the Division finds that the applicant is fit, willing, technically qualified, and financially able to perform the service for which it has applied, and is willing and able to comply with the Division Rules and the laws of the State of Rhode Island, then the Division is required to issue a Compliance Order Certificate to the applicant.⁴

Once a Compliance Order Certificate has been issued, the applicant must notify the Division within thirty (30) days to indicate whether it will accept or decline the certificate.⁵ Acceptance of a Compliance Order Certificate thereafter authorizes and obligates the applicant to meet all requirements set forth in the Rules regarding the second phase of the process, the prerequisite requirements for a Construction Certificate.⁶

B. Construction Certificate

Procedurally, applicants who possess a Compliance Order Certificate, who are seeking a Construction Certificate, must submit the following information and

⁴ See Section 3.3(d) of the Rules.

⁵ See Section 3.3(e) of the Rules.

⁶ See Section 3.3(g) of the Rules.

documentation to the Division to satisfy the requirements of the second phase of the regulatory process:

- (1) *a map and metes and bounds description of the certified service area, showing the planned phases of construction for the entire CATV system, and complete strand mapping showing the routes of all aerial and underground trunk and feeder cables in the distribution system. Such map and description shall also indicate those parts of the service area which the applicant anticipates would receive service only through application of the proposed line extension policy;*
- (2) *a complete technical and narrative description of the system design, including system and equipment specifications;*
- (3) *proof of conformance with the technical, engineering, and safety standards and codes set forth in these rules;*
- (4) *location of towers and headend facilities;*
- (5) *proof that the applicant has obtained all licenses, and other forms of permission required by state and local government bodies prior to commencement of construction;*
- (6) *copies of consummated pole attachment, conduit occupancy, and right-of-way agreements;*
- (7) *copies of all arrangements with common carrier communications companies or services;*
- (8) *proof of a satisfactory method of maintenance and continuing records of operations to show adequacy of service and performance and continuing financial responsibility;*
- (9) *satisfactory evidence of liability insurance coverage in amounts specified by Chapter 12 of these rules;*
- (10) *any corrections, updates or amplifications, to items filed at the time of application for a Compliance Order, including especially system design parameters required to be filed by Section 3.3(c)(3) of these rules.⁷*

If upon receipt and after consideration the Division finds that the applicant for a Construction Certificate has met all of the conditions, terms, and requirements for the Compliance Order Certificate, and the Division's Rules, then the Division must grant a Construction Certificate to the applicant.⁸ An applicant in possession

⁷ See Section 3.4(b)(1-10) of the Rules.

⁸ See Section 3.4(c) of the Rules.

of a Construction Certificate is then authorized to commence actual construction of a CATV system in Rhode Island.⁹

C. Certificate of Authority to Operate

The holder of a Construction Certificate must give the Division sixty (60) days prior written notice before the anticipated date when the CATV system (or initial segment thereof) will be ready for commencement of delivery of services to the public. Upon receipt of such notice, the Division is required to conduct a duly noticed public hearing.¹⁰

Applicants for a Certificate of Authority to Operate are required to file a complete copy of the proposed customer contracts; rules and regulations; and any and all changes, corrections, additions and clarifications to documents previously filed with the Division.¹¹

After the Division has had an opportunity to conduct a hearing, and upon the Division's determination that the applicant has complied with applicable statutes, the Division's Rules, and any additional terms, conditions, and requirements that may be imposed upon the applicant by the Division, the Division shall issue a Certificate of Authority to Operate to the applicant.¹²

D. Timetable

Section 8 of the Rules establishes a mandatory timetable for the completion of

⁹ See Section 3.4(d) of the Rules.

¹⁰ See Sections 3.5(a) and (b) of the Rules.

¹¹ See Section 3.5(c) of the Rules.

¹² See Section 3.5(d) of the Rules.

the above-described three-phase regulatory process. The timetable is reproduced below:

- (a) *All necessary governmental permits, licenses, authorizations, and certificates (except a Construction Certificate) shall be applied for within ninety (90) days of the date of acceptance of a Compliance Order Certificate.*
- (b) *The holder of a Compliance Order Certificate shall meet all requirements for granting of a Construction Certificate (as set forth in Section 3.4 of these rules) within two hundred seventy (270) days from and after the applicant's acceptance of a Compliance Order Certificate.*
- (c) *Construction of a CATV system shall begin within ninety (90) days of completion of contiguous makeready work for the first phase of construction; provided further that applications for such makeready work shall be made within thirty (30) days of receipt of a Construction Certificate.*
- (d) *The certificate holder shall maintain current duplicate copies of all as-built design maps for its system at its local business offices, one of which shall be deemed to be the Division's copy.*
- (e) *The certificate holder shall give the Division at least sixty (60) days written notice of the date on which the CATV system or portion thereof is expected to be ready for commencement of service to the public.*
- (f) *Subscriber service shall commence as soon as practicable following receipt of a Certificate of Authority to Operate.*
- (g) *The operator's complaint department shall begin operation at the same time as service commences.*
- (h) *Within one year after receipt of a Construction Certificate, the holder thereof shall have completed sufficient construction to make service available to both potential residential subscribers and institutional and industrial users in at least twenty percent (20%) of the service area, or have completed construction of at least one hundred (100) plant miles of residential subscriber network cable, whichever is greater. Thereafter, service on both the residential and institutional/industrial networks shall be made available to potential subscribers and users at the rate of twenty (20%) percent of the service area per year.*
- (i) *Unless the Administrator shall have waived the requirement, within five years from the receipt of the Construction Certificate the holder thereof shall have made service available to all potential residential subscribers and designated institutions in those portions of its service area*

meeting the density tests described in section 10.2 of these rules.

- (j) *For the purposes of this section, “to make service available” shall mean to pass homes or designated institutions with energized residential subscriber network or institutional/network trunk cable (as appropriate) so that those homes or institutions may be connected to the system.*¹³

4. HEARINGS AND APPEARANCES

The Division conducted six public hearings in this docket. The duly noticed hearings were conducted on January 8, 10, 11 and 30; March 29; and April 5, 2001. With the exception of the hearing that was conducted on January 30, 2001, all hearings were held at the Division’s hearing room, located at 89 Jefferson Boulevard in Warwick. The January 30, 2001 hearing was conducted at 6:00 p.m. at the Burnside Building, 400 Hope Street in Bristol. The following counsel entered appearances in this docket:

For Cox:	Alan D. Mandl, Esq. and Kevin Horan, Esq.
For the Attorney General:	Paul J. Roberti, Esq. Assistant Attorney General and William Lueker, Esq. Special Assistant Attorney General
For the Division’s Advocacy Section:	Leo Wold, Esq. Special Assistant Attorney General
For NECTA:	William D. Durand, Esq. and Robert J. Munnely, Jr., Esq.
For Full Channel:	William C. Maaia, Esq.

¹³ See Section 8.2(a-j) of the Rules.

For ABI:

Stephen Richards, Esq.¹⁴

5. COX'S DIRECT CASE

Cox presented one witness in support of its application. The witness was identified as Mr. John Wolfe, Vice President of Government and Public Affairs, supra.¹⁵

Mr. Wolfe discussed the information provided by Cox in support of its application for a Compliance Order Certificate and the reasons why the granting of Cox's application would be in the public interest. He also discussed the Company's position on "level playing field" considerations.

Mr. Wolfe began his testimony with an overview of Cox's service history in Rhode Island. He related that Cox has been providing cable television service to residents of Rhode Island over the last two decades. Mr. Wolfe noted that Cox currently operates in ten of the State's thirteen CATV Service Areas.¹⁶ He

¹⁴ ABI ultimately dropped out of this proceeding after it announced that it would be abandoning its goal of becoming a CATV operator in Rhode Island. (See Order No. 16572, issued on 5/10/01).

¹⁵ Albeit not presented as witnesses in its direct case, Cox did make its Acting Vice-President of Network Development, Mr. Alan Gardiner, available to answer some cross-examination questions regarding technical components of Cox's system (see 1/11/01, Tr. 181-190); and Ms. Elizabeth Viall, Cox's Public Access Supervisor, available to answer cross-examination questions regarding Cox's recent spending on Public Access facilities and equipment (4/5/01, Tr. 41-58).

¹⁶ Cox currently provides cable television services in the following Service Areas and Communities:

Service Area 1. Woonsocket, Smithfield, No. Smithfield, Lincoln, Cumberland and Central Falls

Service Area 2. Providence and North Providence

Service Area 3. Cranston, Johnston and Scituate

Service Area 4. East Providence

Service Area 6. Warwick, West Warwick, East Greenwich and Coventry

Service Area 7. Newport, Middletown, Portsmouth, Tiverton and Little Compton

Service Area 8. Narragansett, Jamestown, N. Kingstown, S. Kingstown, Exeter and West Greenwich

Service Area 9. Charlestown, Hopkinton, Richmond and Westerly

Service Area 10. Pawtucket

Service Area 13. Burrillville and Glocester

testified that throughout this time Cox has invested over \$300 million to construct a state-of-the-art broadband telecommunications infrastructure. He related that this infrastructure currently provides analog and digital cable television service and high-speed Internet access to much of the State. Mr. Wolfe related that Cox now wishes to expand its infrastructure and services into Service Area 5 (Cox Exh. 3, pp. 2 and 3).

Mr. Wolfe next reviewed and summarized the information contained in the Company's application filing. This review included discussions regarding Cox's planned system architecture and channel capacity (Id., pp. 4-6); Cox's planned programming services (Id., pp. 6-7); the Company's timetable for completing construction of necessary facilities (Id., p. 7); the Company's conformance with all applicable regional and local technical and safety specifications (Id.); the Company's proposed pricing (Id., pp. 7-8); the terms and conditions under which Cox will provide service and connections to educational, charitable and government entities (Id., p. 8); and Cox's plans regarding PEG access (Id., pp. 8-9).

Regarding the issue of PEG access, Mr. Wolfe testified that should the Company be required to build a separate studio in Service Area 5, it plans to enter into discussions with an educational institution in Bristol County to house the studio. He related that Cox would staff the studio with its own personnel (Id., p. 8). Mr. Wolfe estimated that such a studio would require a one time capital commitment of \$250,000 – \$300,000 for equipment (Id., p. 9). Mr. Wolfe related that Cox plans to offer two public access channels and two interconnect channels in Service Area 5 (Id. and 1/30/01 Tr. 24-25).

Mr. Wolfe additionally summarized the information contained in the Company's application regarding Cox's other cable television and media holdings. He testified that Cox is among the nation's five largest multiple system operators with approximately 6.1 million cable television customers nationwide (Id., p. 9). Mr. Wolfe also summarized the Company's corporate ownership structure (Id.).

Mr. Wolfe also discussed the Company's financial plan for extending service to Service Area 5. He related that the Company intends to make an initial capital investment of \$11 million and expects that its total capital investment over the first 10 years will exceed \$19 million (Id., p. 10). Mr. Wolfe testified that the initial \$11 million investment will support the construction of a 750 MHz fiber-optic based FSN. He related that additional investment in the first two years of operation is expected to total \$5 million. He described this additional investment as being related to the cost of connecting subscribers to the network and for customer premises equipment. Mr. Wolfe explained that Cox's capital requirements will be funded from operating cash flows of Cox Communications, Inc., the parent corporation of the Company (Id.).

Mr. Wolfe next commented on Cox's qualifications and experience. He provided a brief description of Cox's executives and senior management team (Id., p. 11). He also described the Company's significant current presence in Rhode Island. Specifically, Mr. Wolfe quantified the level of investment Cox has made in Rhode Island over the last five years. He included detailed information on the number of personnel and resources Cox has employed in carrying out its CATV operations in Rhode Island (Id., pp. 12-13).

Mr. Wolfe asserted that permitting Cox to expand its cable and telecommunications services into Service Area 5 “*will promote the public interest*” (Id., p. 13). He opined that the “*presence of another cable service provider will create competition that should benefit consumers over time*” (Id.). He added that Service Area 5 residents will also “*be afforded the related benefits of high speed Internet service and a competitive provider of facilities based local telecommunications services*” (Id.).

In his closing comments, Mr. Wolfe commented on Cox’s willingness to fully comply with the Division’s existing rules, but noted that Cox expected to receive “level playing field” consideration. In particular, Mr. Wolfe related that “*Cox expects that the same standards that applied to ABI will also apply in this proceeding*” (Id., p. 14).¹⁷

Cox additionally proffered a number of exhibits in further support of its application filing. These exhibits included the following:

- Cox’s responses to Division requests for supplemental information (Cox Exh. 2);
- Cox’s responses to Attorney General Data Requests (Cox Exh. 4);
- Cox’s supplemental responses to Attorney General Data Requests (Cox Exh. 5);
- Cox’s responses to Full Channel Data Requests (Cox Exh. 6);
- Cox’s supplemental responses to Full Channel’s Data Requests (Cox Exh. 7);
- Cox’s clarification of responses to Full Channel’s Data Requests (Cox Exh. 8);
- Full Channel’s “Channel Line-up” (Cox Exh. 9);

¹⁷ See Division Docket No. C-00-3. This Docket related to ABI’s prior application before the Division wherein it sought authorization to operate as a cable television provider in Rhode Island.

- Copy of Division Order No. 16349, regarding Cox's acquisition of MediaOne Enterprises, Inc.'s Service Area 9 Certificate of Authority (Cox Exh. 10);
- Copy of Aerial License Agreement between Cox and the Narragansett Electric Company (Cox Exh. 11(A));
- Copy of Aerial License Agreement between Cox and Verizon (Cox Exh. 11(B));
- A suggested inventory of public access studio equipment (Cox Exh. 14);
- Data regarding "Public Access Activity 2000" (Cox Exh. 15);
- Rebuttal response to public comments regarding public access facilities in Salem, Oregon (Cox Exh. 16); and
- A compilation of materials describing Cox's public access efforts in Rhode Island (Cox Exh. 17).

At the conclusion of its direct case, Cox filed two pleadings requesting that the Division modify the application of its Rules with respect to the CATV services Cox is proposing for Service Area 5. Both pleadings were filed pursuant to provisions contained in the Rules.

The first request, filed in accordance with Section 14.1(e) of the Rules, seeks a Division determination that current demand in Service Area 5 does not warrant Cox's activation of all the specially designated access channels required by Section 14.1 of the Rules; and (2) that if the Division grants Cox's application for a Compliance Order Certificate, that the certificate initially permit Cox to combine its access programming onto two channels, subject to future demand (Cox. Exh. 12).^{18 19}

¹⁸ An amended pleading was submitted after the hearing and substituted for the original pleading on January 16, 2001.

¹⁹ Full Channel filed a written objection to this request on January 25, 2001.

The second request, filed in accordance with Section 1.12 of the Rules, seeks a temporary waiver of the I-Net requirements contained in Section 7.3(a) of the Rules. In support of its waiver request, Cox states that it currently has a petition before the Division in the context of another docket, Docket No. D-00-C-7, which when decided by the Division, will be dispositive of the Section 7.3(a) requirements issue involved in the instant docket proceeding. Accordingly, Cox seeks a temporary waiver pending the outcome of Docket No. D-00-C-7 (Cox Exh. 13).^{20 21}

6. FULL CHANNEL'S DIRECT CASE

Full Channel did not proffer any witnesses in this docket.²² However, in response to a directive imposed by the Division, Full Channel did file a "Position Memorandum" prior to the commencement of hearings (Full Channel Exh. 1).

In its Position Memorandum, Full Channel contends that before the Division grants Cox a Compliance Order Certificate, the Division must evaluate Cox's past performance in other CATV Service Areas in order to "determine whether or not Cox has performed as promised" (Id., p. 1).

Full Channel additionally argues that the Division must also determine if Cox is in compliance with the Rules and whether Cox has complied with previous Division orders (Id.).

²⁰ An amended pleading was submitted after the hearing and substituted for the original pleading on January 17, 2001.

²¹ Full Channel filed a written objection to this request on January 25, 2001.

²² Full Channel did, however, use Mr. Alan S. Hahn, a consultant with offices at 38 Catherine Court, Ringwood, New Jersey, to offer brief comments on the stipulation filed in this docket. The hearing officer limited Mr. Hahn's comments to this very limited issue due to Full Channel's earlier decision not to present a direct case in this docket (See 4/5/91, Tr. 75-132).

Full Channel also expressed the following concerns about “competition” and “Rule changes”:

The Administrator must weigh carefully if the State’s objective to create competition is reason enough to warrant waivers and radical changes in the rules on the “theory” that to require said rules is burdensome and that the benefit (i.e. competition) to the public and the community would be greater to have these rule changes. Are the current rules or requirements really an “undue burden” or “hardship” for Cox (or any company)? Full Channel’s position is that they are not and too much competition in Area 5 could actually not be beneficial to the public in those three towns (Id., p. 2).

Regarding Cox’s request for a temporary waiver of the I-Net requirements under the Rules, Full Channel voiced an objection and an opposing view. Full Channel argues that the Rules mandate a “physically separate” I-Net because there is a distinct advantage to a separate network. Full Channel maintains that there is “no technological equivalent” to “a dedicated institutional RF network” (Id., p. 5). Full Channel offered several technical bases for its opinion on this issue (Id., pp. 5-6). Full Channel further argued that Cox’s claim that present technology makes the Rules obsolete with respect to a separate I-Net is irrelevant. Full Channel asserts that until the Rules are amended, Cox must fully comply with them (Id., p. 7).

Full Channel also took the position that Cox has failed to satisfy the Rules’ I-Net requirements in its other service areas. Full Channel proffered a copy of a letter from the Superintendent of Providence Schools to show that the Superintendent has expressed an interest in the development of an institutional network that could be used by Providence Schools (Full Channel Exh. 2).

7. ATTORNEY GENERAL'S DIRECT CASE

Like Full Channel, the Attorney General elected not to proffer any witnesses in this docket. As required by the hearing officer, the Attorney General did submit a position statement in lieu of pre-filed witness testimony (Attorney General Exh. 1).

In its statement, the Attorney General declares that a “franchise should not be awarded to Cox for Area 5 without careful scrutiny regarding the future of public access in that franchise area” (*Id.*, p. 1). The Attorney General additionally asserted that the Division must include a review of whether Cox has complied with the Rules in its other franchise areas in its consideration of Cox’s application in this docket. The Attorney General contends that the compliance review should focus on the issues of “PEG Channels Provision” and “Studio Equipment” (*Id.*, p. 2).²³

The Attorney General concluded that if compliance deficiencies are found, the Division may wish to condition an award of a Service Area 5 franchise upon fulfillment by Cox of certain conditions that will be tailored towards improving the quality of public access in Rhode Island (*Id.*, p. 2).

8. ADVOCACY SECTION'S DIRECT CASE

The Advocacy Section also decided not to proffer any witnesses in this proceeding. It too submitted a position statement.

The Advocacy Section identified two basic issues that it opined needed to be resolved in this case. The two issues were described as (1) “*ensuring that certain basic franchise terms and conditions are reflected in ... any Compliance Order*

²³ As one of the bases for its concerns relative to PEG access in Rhode Island, the Attorney General offered a letter from a concerned public access producer for the record (Attorney General Exhs. 2 and 2A).

*Certificate that is issued to Cox” and (2) “ascertaining how this docket will dovetail into the results of pending dockets that are currently before the Division” (Advocacy Section Exh. 1, p. 1).*²⁴

Regarding the issue of franchise terms and conditions, the Advocacy Section recognized the general areas of public access studios; the I-Net; and the number of PEG channels as most important. The Advocacy Section opined that temporary waivers for these three issues may constitute an appropriate course of regulatory action until the final details on these matters can be worked out. As a procedural example, the Advocacy Section proffered a copy of a stipulated agreement from another CATV franchise docket (Id., attachment).²⁵

9. PUBLIC COMMENTS

Forty-one individuals offered public comment during the hearings conducted in this docket. These individuals included the Honorable Nicholas Gorham, Representative, District 53; the Honorable Raymond Gallison, Representative District 91; the Honorable Mary Grant, Barrington Councilwoman; the Honorable Richard Ruggiero, Chairman, Bristol Town Council; the Honorable David Barboza, Bristol Councilman; and the Honorable William McDougall, Warren Councilman.

Representative Nicholas Gorham indicated that he was appearing on behalf of the citizens of the town of Foster, which Representative Gorham characterized as *“the only town in the State of Rhode Island that has no cable access”* (1/18/01, Tr.

²⁴ Referencing Docket Nos. 2000-C-3 (American Broadband Franchise application) and D-00-C-7 (Cox I-Net waiver petition). As noted earlier in footnote 14, ABI has since abandoned its goal of becoming a CATV operator in Rhode Island.

²⁵ Docket No. 2000-C-3.

46). Representative Gorham asked the Division to exercise its authority to compel one of the State's cable companies to provide cable television service to Foster. He related that Foster has been waiting twenty years for cable service and ought to now receive initial service. He argued that it is unfair to leave Foster behind while other communities are enjoying competitive services from two or more cable television companies.²⁶

Representative Raymond Gallison spoke out in favor of adequate PEG access. He related that any cable television company doing business in Bristol County must provide suitable studios and PEG access channel capacity. Representative Gallison also related that he would like to see cable service provided to each veteran living at the Veterans' Home (1/30/01, Tr. 9-11).

Councilwoman Mary Grant identified herself as the liaison between the Barrington Town Council and the Service Area 5 Citizens' Advisory Committee. She explained that she is responsible for ensuring that council meetings are shown on local access television. Councilwoman Grant thereupon pleaded for volunteers to assist in the promotion of public access programming. She related that more volunteers "*are needed to continue our system of democracy*" (1/30/01, Tr. 29-30).

Council Chairman Richard Ruggiero related that his constituents want "*choice*." He opined that competition brings choice and better service. He also believes that competition promotes the quicker introduction of technological improvements. Chairman Ruggiero concluded that as long as the rules are applied

²⁶ Since Representative Gorham's comments on January 18, 2001, Cox has filed an application with the Division seeking authority to provide CATV services in the town of Foster. That application is now pending before the Division in the context of Division Docket No. D-01-C-2.

equally for all cable television companies doing business in Service Area 5, he welcomes the competition.

Councilman David Barboza identified himself as the liaison between the Bristol Town Council and the Service Area 5 Citizens' Advisory Committee. Councilman Barboza declared that "*Bristol residents take their cable pretty seriously*" (1/30/01, Tr. 32). He related that because public access is so important to Bristol, he is concerned about the prospect of granting Cox any waivers that would diminish its obligations to provide public access.

Councilman William McDougall appeared in his capacity as a "*consumer*" from the town of Warren. Councilman McDougall stated that as a consumer he believes competition is important. He related that so long as Full Channel and Cox are permitted to compete "*on a level playing field,*" he welcomes Cox doing business in Warren. Councilman McDougall also asked Cox to consider discounts for senior and handicapped citizens (1/8/01, Tr. 67-68).

Two members of the Service Area 5 Citizens' Advisory Committee also commented on Cox's application. Mr. Seymour Glantz, the Committee's Vice-Chair and Secretary raised a number of questions concerning Cox's plans for an I-Net. Mr. Glantz voiced opposition to any plans that would mean less capacity than mandated under the Rules. He would also like to see this network expanded to churches and parochial schools.

Mr. Glantz also raised a question about the way two or more cable television companies operating in Service Area 5 will coordinate their public access programming. He is looking for "*seamless*" public access (1/8/01, Tr. 73).

Mr. Glantz also queried about the number of access channels that would be available to each town in Service Area 5, and what will the towns need to pay for modulators to access their assigned channels.

Mr. Glantz strongly opposed any notions of reducing Cox's obligations under the Rules to provide adequate studio production facilities and personnel. He contended that public access and origination programming cannot exist if the Rules are relaxed (Id., Tr. 74-76).

Mr. Glantz further requested that the Division and Cox "*respect the voices of citizens as expressed through the Service Area Citizens' Advisory Committees*" (Id., Tr. 77). Mr. Glantz related that public access television fosters and expands the free exchange of ideas in Bristol County, and that the Citizens' Advisory Committee in Service Area 5 advocates for full support of these services from all service providers (Id.).

Mr. Stephen Roy, the Chairman of the Service Area 5 Citizens' Advisory Committee also commented. He expressed disappointment over the lack of information coming to his Committee regarding matters relevant to Service Area 5. He related that "*we're feeling like we're not in the loop*" (1/30/01, Tr. 17). In subsequent testimony, he requested that his Advisory Committee be included on the docket's service list (3/29/01, Tr. 12).²⁷ He additionally raised questions about Cox's I-Net design and about the institutions which would have access to this network.

²⁷ Although unorthodox for a non-party, the undersigned hearing officer directed the parties to include the Service Area 5 Citizens' Advisory Committee on the service list.

Mr. Roy also commented on PEG access channel capacity. He questioned why Cox would limit its PEG access programming to two channels when its proposed system will support 278 channels. He recommended more channels for PEG access, including a separate channel for “leased” access (Id., Tr. 20-21).

Mr. Roy also had concerns about Cox’s decision to locate a public access studio at a local university. He opined that the demand on the facility by students of the university could cause access impediments for others wishing to use the studio (Id., Tr. 21-22).

Mr. Roy additionally voiced concerns about Full Channel’s ability to compete alongside Cox. He predicted that Full Channel will ultimately have difficulties attracting capital from investors and banks due to its smaller business size (3/29/01, Tr. 14). Mr. Roy feared that PEG access and I-Net users will suffer (Id., Tr. 15). Predicated on these concerns, Mr. Roy took exception to Cox’s two petitions, which seek permission to limit its number of PEG channels to two, and to use its FSN to provide I-Net functionality in lieu of constructing a separate B-cable (Id., Tr. 15-22). For the same reasons, Mr. Roy related that he could not support the stipulation, infra, submitted by Cox, NECTA, the Attorney General and the Advocacy Section.

Mr. Roy also questioned whether Cox’s proposed I-Net design will be “*inexpensive and simple for the end user to operate*” (4/5/01, Tr. 24). He also wondered if Cox was actually going to maintain its proposed I-Net system (Id.).

In his closing comments, Mr. Roy asked the Division to reestablish a State Cable Television Advisory Council, as required pursuant to Section 15.2 of the

Rules. He also requested that the Division restart the Citizens Advisory Committees in each Service Area. He concluded that the need for “*common community oversight has never been greater*” (Id., Tr. 25).

The balance of public comment covered a wide variety of interests. The tenor of these comments has been summarized below:

- A parent praised Cox for its scholarship programs and public service announcements (1/8/01, Tr. 22-25);
- The Director of the Park View Middle School in Cranston complimented Cox for promoting music education in public schools (Id., Tr. 26-28);
- A teacher from East Providence praised Cox for providing free cable and Internet equipment and services in public schools (Id., Tr. 29-30);
- The Director of Technology for the Woonsocket School System commended Cox for its work with award winning essay contests and its “*Cable in the Classroom*” program (Id., Tr. 31-32);
- The Audiovisual Coordinator at East Providence High School praised Cox for recording school concerts, sports programs and graduation exercises and providing schools with electronic bulletin board services (Id., Tr. 33-35);
- The Operations Officer of Textron Chamber Academy called Cox a “*valuable partner in the delivery of educational services.*” Cox’s support for scholarship programs and its tutorials on video production techniques were singled out (Id., Tr. 37-41);
- Several professors from Brown University’s Department of Computer Sciences spoke out in favor of the high-speed Internet access Cox can bring to Service

Area 5. Full Channel was criticized for its failure to upgrade its facilities over the years, which now has resulted in its inability to provide high-speed Internet service (Id., Tr. 42-45);

- A public access producer testified in support of separate access channels for “public,” “educational” and “government” programming. He opined that with a dedicated educational channel Rhode Island could see an “*unbelievable*” proliferation of educational programming. This individual also would like to see Cox vastly improve the quality of the studio equipment now available to the public access producers (Id., Tr. 8-127);
- Another public access producer suggested that the State impose a franchise fee on CATV operators for the purpose of raising funds for better public access studios. He also supported four separate channels for PEG and leased access programming (Id., Tr. 135-143);
- Two members of the public appeared to voice concern over the current cost for cable television service. They contended that the rate increases that have gone into effect over recent years have been unreasonable (Id., Tr. 143-148);
- Other public commentary included preference for Cox’s basic cable service over Full Channel’s, based primarily on the respective prices (Id., Tr. 148-150 and 1/30/01, Tr. 62);
- Another public commentary included a statement of dissatisfaction with Full Channel’s services which prompted the individual to purchase satellite dish service. This individual also criticized Full Channel for not providing high-speed Internet service to its customers (Id., Tr. 150-154);

- The Chairman of Johnson & Wales University's School of Technology appeared to commend Cox for its "*fantastically rich programming for the kids in the K through 12 arena*" (Id., Tr. 155-157). He also described Cox's work with undergraduate students on issues relating to the business of being a full-service communications provider (Id., Tr. 157-158);
- The Executive Vice President of the United Way of Rhode Island described Cox as a "very good community partner." She opined that Cox would make a "*very good contribution to any community in which they are allowed to serve.*" She praised Cox for the generous donations received from the corporation and its individual corporate leaders (1/10/01, Tr. 12-16);
- A teacher from Hope High School in Providence, who produces public and educational programming through the Cox system, appeared to promote increased spending for PEG access in Rhode Island. Regarding this matter, this individual contends that Cox isn't doing enough. He cited occasions where he has observed access studios being closed early, understaffing and failures to air programs as scheduled as evidence of Cox's insufficient commitment to PEG access. He also opposed the notion of moving access studios to college campuses. He additionally contended that Cox should not receive any payments for airing college telecourses, as he believes the law requires Cox to provide this service for free. In conclusion, this individual recommended that Cox's application be denied until it demonstrates an additional substantial financial commitment to PEG access in Rhode Island (Id., Tr. 16-23);

- The Executive Director of the Rhode Island Technology Council declared that every Rhode Islander deserves the very best possible telecommunications platform to work from and have access to digital cable, high-speed modems and telephone service. He added that “*competition creates good things*” (Id., Tr. 60-62);
- The Coordinator of the George Wiley Center urged the Division to delay approving Cox’s application until such time that Cox gives the following assurances:
 1. That it will add one or two new stations to its lowest-cost basic service. He suggested “CNN” and perhaps a local news program designed to provide low income Rhode Islanders with useful consumer information.
 2. That it will lower the price of its telephone service to East Bay residents.
 3. That it will promise to not raise cable rates in 2001.
 4. That it will expand the eligibility of discounts for the elderly.
 5. That it will provide a “local site” for an access studio and not integrate a studio into an educational institution.
 6. That it will make every effort to inform East Bay residents of telephone and cable discounts that may be available to them.
 7. That its officials will meet regularly with East Bay residents to discuss any concerns and issues that may arise. (Id., Tr. 62-69);
- A representative from the Sergeant Rehabilitation Center in Warwick praised Cox for its assistance in providing cable television and Internet services to its clients. She related that through Cox’s assistance, her clients have been able to find a greater number of community opportunities (Id., Tr. 75-77);

- The Executive Director of the Special Olympics in Rhode Island also praised Cox for its support. He related that Cox has provided financial support, has taped his organization's annual awards banquets and has assisted in co-producing television programming. He concluded by stating that "*we are very pleased with the relationship we've had with Cox*" (Id., Tr. 78-81);
- A Bristol resident offered support for Full Channel's Portuguese-American public access programming. He stated that if Cox is permitted to operate in Service Area 5, it must be compelled to provide and maintain facilities for the production of such programming (1/30/01, Tr. 36-39).
- A number of Service Area 5 residents welcomed the high-speed broadband access that Cox would bring to their communities (Id., Tr. 39-40, 63, 70-73 and 86-87).
- A representative from the Zion Bible Institute appeared to ask Cox if it would be willing to telecast live worship services and whether Cox would be employing Portuguese speaking people to work in Service Area 5. This individual also questioned whether Cox and Full Channel would agree to using a separate nonprofit organization to operate their access studios. He based this question on some difficulties he has experienced with Cox's access facilities in East Providence and the difficulty he has understanding Cox's Public Access Rules (Id., Tr. 44-49).
- Another individual who produces public access programming argued in favor of the provision of seven access channels. He contended that the Division's Rules require seven channels and that Cox ought to be compelled to provide all seven before it is permitted to operate in Service Area 5 (Id., Tr. 52-53). He further

insisted that Cox provide the specific I-Net system required under the Rules (Id., 54-55).

- A Middletown resident requested that Cox consider airing French-Canadian programming. He was also concerned over the loss of several Boston-based television channels, historically in Cox's channel lineup (Id., Tr. 56-59).
- A public access producer from the Portsmouth/Newport area offered comments designed to allay concerns about Cox's commitment to public access. He related that he has enjoyed a good relationship with Cox over the years. He praised Cox for the equipment it makes available to public access producers (Id., Tr. 59-60).
- A school teacher commented that Cox has provided free Internet service at the school where he teaches. He also noted that Cox has made generous donations to the school which have been used to fund field trips and extracurricular educational activities (Id., Tr. 60-61).
- Another individual voiced support for Cox's application due to the "*choice*" it will bring Bristol County consumers. He related that Cox's programming and high-speed Internet services will require consumers to decide which cable service is best for them (Id., Tr. 63-65).
- Another individual indicated that competition is preferable to a monopoly. He urged the Division to provide a level playing field to ensure that Cox and Full Channel may coexist (Id., Tr. 66-70).
- The Graphics Coordinator for Brown University described today's broadband technology as a "*necessity*." He thereupon voiced support for Cox and the broadband services it will bring to Service Area 5 (Id., Tr. 70-73).

- A public access producer testified in support of utilizing at least four PEG channels. She suggested that one channel be used for religious programming. She also expressed confusion in the way Cox locates its staff offices at its Pawtucket offices. She related that Cox's public access staff should be in offices that are closer to the studio (4/5/01, Tr. 75-82).
- Another public access producer appeared to request that Cox provide "*more emphasis and more energy and facilities*" for the public access community (Id., Tr. 83).

10. STIPULATION

On March 7, 2001, Cox, the Advocacy Section, NECTA and the Attorney General filed a settlement agreement that had been reached between these four parties. The agreement, entitled "STIPULATION", is attached to this Report and Order, as "Appendix 1" and incorporated by reference (Joint Exh. 1).

In the settlement agreement, the four parties submit that the evidence of record in this docket permits the Division to find that Cox has satisfied the requisite criteria for the issuance of a Compliance Order Certificate.

The four parties further submit that the Division may issue a Compliance Order Certificate to Cox in accordance with the draft Compliance Order Certificate annexed to the Stipulation. Said draft containing various terms and conditions, which Cox would agree to satisfy as a condition of being granted the Compliance Order Certificate (Id.).

The same parties further submit that the evidence of record in the docket permits the Division to find that the Compliance Order Certificate being proposed by

the parties does not contain terms or conditions more favorable or less burdensome than those imposed on Full Channel (Id.).

The same parties further submit that the evidence of record in the docket permits the Division to find that Cox has demonstrated that current demand does not warrant Cox's activation of all specially designated access channels required by Section 14.1 (a) of the Rules; and that current demand can be met if Cox activates only two access channels (a public access channel and a combined educational/governmental channel). The parties acknowledge that their proposal would not alter Cox's obligation to provide two additional interconnect channels, or the Division's authority to require Cox to activate additional access channels if deemed necessary and appropriate (Id.).

The parties further submit that if the Division is satisfied from the evidence Cox presents, the Division may grant Cox a temporary waiver of Section 7.3 of the Rules, pending and subject to compliance with the Division's orders in Docket No. D-00-C-7, supra, (Id.).²⁸

11. DISCUSSIONS AND CONCLUSIONS

In considering applications for Compliance Order Certificates, the Division is charged with the responsibility of determining whether the applicant has satisfied the specific burden of proof established in Section 3.3 of the Division's Rules, supra, and Rhode Island General Laws, Section 39-19-4 ("R.I.G.L. §39-19-4"). If the

²⁸ When the aforementioned parties first began discussing the possibility of a settlement in this docket, Full Channel argued (in January, 2001) that a settlement between these parties would be unfair to Full Channel. Full Channel subsequently filed a written objection on February 2, 2001. Full Channel filed a second objection on March 23, 2001, after the parties submitted the actual settlement agreement.

applicant has satisfied the requisite burden of proof the Division must grant the application.

Section 3.3 of the Rules sets forth minimum filing requirements that a prospective CATV company must incorporate into its application for a Compliance Order Certificate (See Section 3.3(c)(1-11), supra). Specifically, all applications must include information on eleven categories of detail relative to the proposed CATV system. In addition to the minimum filing requirements, applicants may proffer whatever other additional relevant information they desire, in furtherance of buttressing the application.

Upon receipt of the application and the requisite quantum of supporting documents and information, the application is officially assigned a docket number and a public hearing is noticed and conducted. During the hearing the applicant may present witness testimony and other relevant and admissible evidence in support of the application.

In this docket, Cox filed its application with the Division on April 20, 2000. Upon receipt and review, the Division sought supplemental information from Cox, which was submitted to the Division on June 26, 2000. With this additional information, Cox's application was determined to be in compliance with the minimum filing requirements noted above. Consequently, the Cox application was officially docketed on June 26, 2000. Thereafter the Division bifurcated itself into advocacy and adjudicative components and the Administrator appointed a hearing officer. Subsequently, a procedural schedule was adopted and public hearings were noticed and conducted.

Predicated on the totality of the record evidence compiled during the hearings held in this docket, the Division must now decide whether Cox:

... is fit, willing, technically qualified, and financially able to perform the service for which it has applied, and is willing and able to comply with ... [the Division's] rules and the laws...of Rhode Island (Section 3.3(d) of the Rules).

And whether Cox's:

... proposed operation will be consistent with the public interest (R.I.G.L. §39-19-4).

The aforementioned language, from the Rules and statute, constitutes the precise burden of proof which Cox must satisfy in order to be granted a Compliance Order Certificate in this docket. Notwithstanding the burdens of proof that exist in the subsequent CATV certificate application phases and the so-called “level playing field” issues raised by some of the Intervenor, the issuance of a Compliance Order Certificate must hinge exclusively upon the burden of proof described above.

With respect to “level playing field” issues, the concomitant burden is on the Division and not the applicant. In short, the Division must ensure that fair competition between CATV companies is fostered and preserved. An otherwise qualified applicant cannot be denied a Compliance Order Certificate on the basis of “level playing field” deficiencies. If potential deficiencies are identified, the Division is charged with the regulatory responsibility of correcting them.

Accordingly, the Division will focus its attention on deciding whether Cox has met its burden with respect to each requisite element contained in the laws identified above. An evaluation of “level playing field” related issues will follow.

12. FINDINGS

A. Cox's Fitness, Willingness and Technical Qualifications to Perform the Service for Which It has Applied

The question of Cox's "willingness" to perform the service for which it has applied is obvious. Clearly, the time and resources expended by Cox in furtherance of its quest for a Compliance Order Certificate is sufficient proof of its willingness to perform the proposed services.

Last year the Division needed to determine whether a start-up cable television company, American Broadband of Rhode Island, Inc. ("ABI"), possessed the requisite "fitness" and "technical qualifications" necessary for the issuance of a Compliance Order Certificate.²⁹ Because ABI was a neophyte to the Rhode Island CATV market, the Division needed to carefully scrutinize its principals and officers and their individual and collective abilities to construct and operate the state-of-the-art CATV system that ABI claimed it would build.³⁰ The Division finds that this type of analysis is not required in the case of Cox.

Cox has been operating a CATV system in Rhode Island since 1981. Over the last twenty years, Cox has expanded its operations into ten of the State's thirteen CATV Service Areas. Cox currently serves 288,072 subscribers.³¹ The FSN used by Cox in Rhode Island supports up to 78 analog channels and/or 200 or more digital television channels, along with high-speed data and telephone services (Cox Exh. 1, p. 5). Its 750 MHz HFC sub-split network design constitutes state-of-the-art

²⁹ Docket No. D-00-C-3

³⁰ See Order No. 16339

³¹ As of 1999, See Cox Exh. 6, response to FC-1-50.

broadband technology. Predicated on the size of Cox's current subscriber base and the successful FSN platform it has constructed (and operates) in this state, the Division finds that Cox has more than adequately demonstrated its fitness and technical qualifications to build and operate a CATV system in Service Area 5.

B. Cox's Financial Ability to Perform the Service for Which It Has Applied

The record reflects that Cox plans to initially spend \$11 million to bring its CATV services to Service Area 5. Cox further proposes to spend an additional \$8 million over the first 10 years of operations for a total anticipated investment of \$19 million (Cox Exh. 1, p. 22).

In determining whether Cox has the financial strength to carry out its plans in Service Area 5, the Division considered Cox's current presence in Rhode Island, the breadth of its national infrastructure, and the financial data contained in its 1999 Annual Report to the Division.

Cox has invested more than \$300 million to construct a broadband telecommunications infrastructure in Rhode Island (Cox Exh. 1, p. 12). The Company is currently successfully utilizing this infrastructure to provide cable television service in 34 of the State's 39 cities and towns. Through this infrastructure, Cox currently provides cable service to 288,072 customers.

At the national level, Cox serves 6,102,419 "basic" customers in 23 states (Cox Exh. 1, pp. 19-20 and "Exhibit E"). The Company has additionally made significant investments in a number of programming companies and networks (Id.). According to Cox's parent company's 1999 annual report to its shareholders, Cox Communications, Inc. generated over \$2.3 billion in revenues in 1999 (Id.). The

parent company has over \$26 billion in total assets and employs 12,348 people (Id.). The record reflects that Cox's parent company earned \$881,928,000 in "net income" in 1999 (Id., "Exhibit F").

In its annual report to the Division, Cox lists \$141,354,867 in operating income and net income of \$15,972,084.³²

Cox's ability to finance the capital requirements in issue has only been disputed by Full Channel, and not by any of the other parties or any member of the public who offered comments during this docket. Full Channel contends that Cox:

... should have voluntarily and without any requirement provided a pro forma or better financial information for area 5, especially since it already operates 96% of the cable areas in Rhode Island (Reply Brief, p. 7).

Full Channel also questioned Cox's financial resources based on its preference to use its FSN as an alternative to a physically separate ("B-cable") I-Net architecture (Id.). Similarly, Full Channel disputed Mr. Wolfe's qualifications to provide the Division with a 'financial forecast' (Id.).

From an examination of the record evidence, the Division finds that Cox is financially able to perform the services for which it has applied. The Division finds that Cox has successfully financed the expansion of its cable television business, both in Rhode Island and elsewhere in the Country. The record clearly shows that over the last twenty years Cox has been able to significantly grow its business and

³² The Division took administrative notice of Cox's 1999 Annual Report to the Division, pursuant to a request from Cox during the proceedings conducted in this docket.

attract new subscribers. The success of this expansion is a testament to Cox's business acumen and financial strength.

The Division rejects Full Channel's arguments on this issue. Cox was under no special duty to perform and submit the financial analysis that Full Channel seeks. Additionally, to suggest that Cox's preference to utilize its FSN as a technological alternative to a separate B-cable is a sign of financial weakness is absurd. Cox has stated that it will abide by the Division's decision on the issue of whether its FSN will be permitted to be used to provide B-cable functionality. The B-cable issue transcends the Service Area 5 application. The Division's decision on this issue will have statewide ramifications for Cox and all I-Net users. Cox's position relative to the B-cable functionality issue in the instant docket has been consistent with its global position for the State. It is not evidence of financial infirmity.

Finally, as it relates to the qualifications of Mr. Wolfe, the Division did not base its finding of Cox's "financial ability" exclusively on the testimony of Mr. Wolfe. Evidence of Cox's financial strength is replete in the record. As stated above, the Division finds that Cox has met its burden of proof on the criterion of financial ability to provide CATV services in Service Area 5.

C. Cox's Willingness and Ability to Comply with the Division's Rules and the Laws of Rhode Island

In a 1999 Division order, previously issued in Docket No. 99-C-2, the undersigned hearing officer found that Cox was "*able to conform to the requirements, orders, rules and regulations of the Division*" (Order No. 15914, p. 6).

Cox has provided a copy of the aforementioned order in the instant docket in support of its contention that it has historically been, and remains, willing and able to comply with the Division's Rules and the laws of Rhode Island (Cox Exh. 1).

In furtherance of this assertion, Mr. Wolfe has stated that Cox *"is prepared to comply with the Division's existing Rules ..."* (Cox Exh. 3, p. 13).

In further reiteration of this commitment, Cox has executed a settlement agreement wherein Cox declares that it *"is able to conform to the requirements, orders, rules and regulations of the Division"* (Joint Exh. 1, pp. 1-2). In that same settlement agreement, Cox agrees to have the issuance of a Compliance Order Certificate:

... subject to Cox's compliance with federal law, Title 39, Chapter 19 and the Rules Governing Community Antenna Television systems (1981), as amended ("Rules") and all Orders of the Division (Id., "Exhibit 1").

Notwithstanding Cox's professed commitment to abide by the Division's Rules and State law, Full Channel has maintained throughout this proceeding that Cox has come before the Division with "unclean hands" (Full Channel Brief, p. 4). Full Channel vehemently argues that Cox has been violating Division Rule 7.3 for years. Full Channel asserts that Rule 7.3 categorically mandates that Cox construct and maintain a physically separate I-Net loop (B-cable) in all of its authorized service areas. Full Channel argues that because Cox has failed to do this it has demonstrated an unwillingness to comply with State law, and consequently, *"should not receive relief"* (Id.).

Full Channel declares that Cox has also manifested its unwillingness to comply with the Division's Rules through the "*arrogance*" it has displayed regarding the overbuild matter in issue. Specifically, Full Channel identifies a complaint it recently filed with the Division that claims that Cox is stringing cable wire in Barrington in violation of the State's electrical code and a Division Rule which prohibits the construction of a CATV system without the proper construction certificate first issued by the Division.^{33 34}

The Division has considered Full Channel's allegations and finds insufficient evidence to conclude that Cox is either unwilling or unable to fully comply with the Division's Rules and State law.

The fact that Cox does not currently have a separate B-cable for I-Net services in all of its currently authorized service areas is a matter of record, which has evolved over the last two decades and long pre-dates the Division's current administration. The Division is now exploring this issue in a separate docket, Division Docket No. D-00-C-7.

In this separate docket, the Division will carefully examine whether Cox's existing I-Net arrangements are in compliance with Section 7.3 of the Division's Rules, whether a waiver is appropriate, or whether Cox ought to be directed to construct and operate a separate I-Net loop or "B-cable."

³³ Full Channel's complaint has been docketed as Division Docket No. D-01-01. The matter is currently pending.

³⁴ Section 1.4 of the Rules

In the instant docket, Cox has agreed to be “*bound by and to extend to Service Area 5 all Division Orders that adjudicate(s) any and/or all of the merits of Docket 2000-C-7*” (Joint Exh. 1, p. 7). The Division finds Cox’s commitment to abide by the Division’s findings in Docket No. D-00-C-7, regarding the issue of an appropriate I-Net, reasonably and adequately addresses Full Channel’s concerns and is in the public interest.

Regarding Full Channel’s complaint about Cox’s wiring activities in the town of Barrington, the Division is currently fully exploring the merits of the complaint in another docket proceeding. However, even if determined to have merit, the Division finds that the nature of the violations raised by Full Channel, would not, in and of themselves, cause the Division to conclude that Cox is unwilling or unable to comply with the Division’s Rules and State law. Put another way, if ultimately proven to have merit, the Division would opt to fine Cox for the violations pursuant to Section 39-19-8.1 of the Rhode Island General Laws, rather than to adopt the extreme penalty that Full Channel seeks for the alleged violations. Frankly, the Division finds that the public interest would not be served by prohibiting Cox from competing with Full Channel in Service Area 5 based solely on the few potential infractions subject within Full Channel’s complaint.

In conclusion, after a thorough review of the record, the Division must find that Cox is unconditionally willing and able to comply with the Division’s Rules and all applicable statutory laws.

D. Is the Proposed Operation Consistent with the Public Interest

In its position statement filed in this docket, Full Channel opined that “... *too much competition in Area 5 could actually not be beneficial to the public in those three towns*” (Full Channel Exh. 1, p. 2). Later, in its brief, Full Channel observed that if “*Cox succeeded with a substantial penetration, it could force Full Channel out*” (Brief, p. 7). Full Channel also stated that it “*needs to be aggressive to protect its interest*” [sic] (Id., pp. 6-7).

Based on the record and arguments proffered by Full Channel in this docket, it is doubtful that Full Channel genuinely supports the notion of any cable television competition in Service Area 5. Therein rests the Division’s conclusion that what Full Channel believes is in the public interest may not coincide with what the Division believes is in the public interest.

Although Full Channel is the incumbent cable operator in Service Area 5, it does not possess an exclusive franchise. Indeed, exclusive franchises are prohibited under both State and federal law.³⁵ In actuality, competition is promoted and deemed desirable under the controlling federal law, as evidenced by laws which mandate that the Division not “*unreasonably refuse to award an additional competitive franchise*” or attempt to regulate the rates of cable companies doing business where “*effective competition*” is present.³⁶

In its ABI report and order issued last year, supra, the Division concluded that “... *consumers will ultimately benefit from the competitive services*” (Order No.

³⁵ See R.I.G.L. § 39-19-3 and 47 USC § 541 (a)(1).

³⁶ See 47 USC § 541 (a)(1) and 47 USC 543 (a)(2).

16339, p. 36). Rhode Islanders have never had access to more than one cable television company per Service Area. The competition promised by ABI never materialized due to an untimely negative turn in the financial markets, which forced ABI to abandon its quest to compete in Rhode Island.³⁷ Service Area 5 now represents the only cable television market in Rhode Island that may, in the near future, benefit from the introduction of competitive cable and related ancillary services. Service Area 5 residents are poised to be the only citizens in Rhode Island where choice in selecting a cable service provider will be a reality. The Division finds such competition to clearly be in the public interest.

The Division further finds the proposed services that Cox plans to provide in Service Area 5 to also be in the public interest. Cox has stated that its programming line-up will include 77 channels of analog video service, over 100 digital channels, 40 commercial-free CD-quality audio channels, an interactive program guide, and access to dozens of premium and pay-per-view channels (Cox Exh. 1, p. 7). Cox's 750 MHz network will also be designed and constructed to support additional service capabilities, including various Internet access products and digital telephone service (Id., pp. 9-10).

A large number of Service Area 5 residents voiced support for these services and the prospect of competition during the hearings. Curiously, however, Full Channel appears to have inferred a far different meaning from their comments, as Full Channel maintains that "*no voice beyond Cox has been heard in favor of this petition*" (Full Channel Brief, p. 17). The Division interpreted the public comments

³⁷ See Order No. 16572, issued on May 10, 2001.

received in this docket much differently. Indeed, the Division has conversely observed that Full Channel has the only voice on the record expressing opposition to Cox's petition.

Residents of Service Area 5 appeared en masse to deliver a resounding message of hope for more diverse and advanced cable television and broadband services. Several of their political representatives also shared their vision of competition and improved services. For example, Representative Raymond Gallison offered support for "*true competition*" (1/30/01, Tr. 11). Bristol Town Council Chairman, Richard Ruggiero, testified that many of his constituents have contacted him to express their interest in cable service competition. Chairman Ruggiero related that he personally would welcome Cox to Bristol. He opined that the competition "*will make for better service for my constituents.*" He also supported the digital services Cox plans to bring to Bristol (*Id.*, Tr. 74-75). Similarly, Warren Councilman, William McDougall, stated that competition is important, and also welcomed Cox to his town (1/18/01, Tr. 67-68).

Comments from residents included support for Cox's educational programs and services, its high-speed Internet products and its digital and telephone services. The "competition" and "choice" Cox would bring to Service Area 5 was also repeated at length by area residents.

From the record generated in this docket, the Division finds clear evidence that authorizing Cox to provide its proposed cable television services in Service Area 5 would be in the public interest.

E. Miscellaneous Findings

1. Request to Combine All Access Programming Onto Two Access Channels

Cox has filed a request in this docket seeking permission to initially combine public, educational, governmental, leased and “other” access programming onto two access channels in Service Area 5 (Cox Exh. 12). Cox filed the request pursuant to Section 14.1(e) and (f) of the Division’s Rules.

In its pleading on this matter, Cox requests that the Division:

... (1) determine that for purposes of the Company’s Compliance Order Certificate to be issued in this proceeding, demand for public, educational and governmental access in Service Area 5 does not presently warrant Cox’s activation of all the specially designated access channels required by Sections 14.1(a) and 14.1(b) of the Rules and (2) order that Cox’s compliance order certificate provide that initially, Cox shall be permitted to combine public, educational and governmental access programming on to two channels and otherwise comply with Sections 14.1(e) and 14.1(f) of the Rules, subject to future increases or decreases in the number of designated access channels pursuant to Sections 14.1(d) or 14.1(e) of the Rules (Cox Exh. 12, p. 2).

Before addressing Cox’s request, the Division believes that a brief description of the Division’s existing Rules on “*Number and Designation of Access Channels*” is in order (Section 14.1 of the Rules). The Rules require a CATV system operator like Cox to “*designate and reserve a minimum of seven (7) television channels for access purposes*” (Section 14.1(a)). CATV system operators are also required to offer residential subscribers separate access channels for “*public,*” “*educational*” and “*government*” use (Section 14.1(b)).

Notwithstanding these requirements, the Rules also provide a procedural mechanism for CATV system operators to seek exceptions from the Division. Specifically, a CATV system operator may be permitted to combine the required public, educational, governmental, leased and “other” access programming:

... onto one or more channels, including at least one channel in the VHF spectrum ... upon a showing to the Administrator that demand does not warrant activation of all the specially designated access channels required by this section (Section 14.1(e)).

Additionally, to the extent that time is available therefor, specially designated access channels may be offered for lease or used for other broadcast or non-broadcast services, “provided that such services are subject to displacement if there is demand to use the channel for its specially designated purpose” (Section 14.1(f)).

In the instant case, Cox has offered evidence in support of its contention that demand for PEG access in Service Area 5 does not presently warrant Cox’s activation of all the specially designated access channels required under the Rules. Specifically, Cox proffered recent data reflecting the number of persons trained to use its existing access studios, the number of active access producers registered at each studio, the number of shows produced at each studio and the average daily hours of programming carried at each studio. The data was compiled as an exhibit entitled “*Public Access Activity, 2000*” (Cox Exh. 15). The record also reflects that the level of utilization in year 2000 has been the historical experience for Cox.

Based on the data contained in Cox’s exhibit, the Division finds, with the possible exception of Cox’s Portsmouth studio, that the one combined access channel currently being utilized by Cox in each of its ten authorized service areas

appears to be satisfying existing access demand. In the matter of Service Area 5, Cox's proposal to utilize two combined access channels to meet projected access demand, double the access channel capacity offered in Cox's other service areas, appears to be adequate and reasonable as an initial level of access channel capacity.

Allowing Cox to initiate cable television operations in Service Area 5 with only two access channels is also consistent with the level of access channel capacity currently provided by Full Channel. The record reflects that Full Channel's most current channel line-up includes only two channels that are specially designated as access channels (Cox Exh. 9). Clearly, Full Channel has concluded that two access channels are sufficient to meet demand in Service Area 5. Furthermore, when Cox begins services in Bristol County, the access producers of Service Area 5 will have four access channels, between the two CATV companies, for the airing of their access programming. This level of channel capacity far exceeds the access channel capacity currently available in any of Rhode Island's other Service Areas.

In conclusion, the Division is confident, from the evidence of record, that community programming services in Service Area 5 can be reasonably provided by Cox, on an initial basis, with only two access channels. The Division emphasizes that if and when demand for additional channel capacity is manifested, the Division will exercise its authority under the Rules to expand channel capacity to meet that growing demand.

2. "Level Playing Field" Statute

Full Channel has argued throughout this case that Rhode Island General Laws, Section 39-19-3 ("R.I.G.L. § 39-19-3") forbids the Division from granting Cox

any waivers from the requirements of the Division's Rules. Full Channel also characterizes R.I.G.L. §39-19-3 as a statutory bar to the Division's acceptance of the Stipulation filed in this docket. The pertinent provision on which Full Channel relies states as follows:

Any additional certificate issued shall not contain terms or conditions more favorable or less burdensome than those imposed on the incumbent company.

This provision is colloquially known as the "level playing field" statute.

Full Channel has argued that Cox's proposal to utilize its advanced FSN as a technological alternative to the physically separate I-Net loop or "B-cable" required under Section 7.3(a) of the Division's Rules would constitute a violation of the spirit and letter of R.I.G.L. §39-19-3. Full Channel reasons that because the incumbent cable provider in Service Area 5 was required to incur the expense of constructing and maintaining the separate B-cable architecture, it would be unfair to spare Cox the same expense. Full Channel asserts that if Cox is insulated from the costs associated with complying with Section 7.3(a), Cox will effectively be authorized to operate under conditions which are "*more favorable or less burdensome*" than those originally imposed on Full Channel.

With respect to the Stipulation filed in this docket, Full Channel asserts that the Division cannot accept the agreement as it too contains terms and conditions "*more favorable*" and "*less burdensome*" to Cox. Full Channel enumerates the following bases for its contention:

- 1. The provisions of the Stipulation violate the rules governing Community Antenna Television Systems.*
- 2. The provisions of the Stipulation provide for*

temporary waiver for which there is no provision in the rules and even if there were, the procedures outlined in Section 1.12 petition for waiver have been ignored.

- 3. The Stipulation was introduced to Full Channel on January 24, 2001 via a document faxed to the company at 5:07 p.m. The document was discussed at a DPUC meeting being held for another topic on January 26, 2001 (approximately 8 working hours later).*
- 4. Full Channel objected to the introduction of the Stipulation immediately and filed its objection February 2, 2001. Full Channel was never informed of any further meetings held to discuss the Stipulation. We believe due process was denied Full Channel TV, Inc.*
- 5. The Stipulation was authored before the end of the public hearings, before the briefs or reply briefs were submitted and disclose extreme bias on the part of the Advocacy Section.*
- 6. The Stipulation was authored with absolutely no input from any of the citizens of Rhode Island, January 30, hearing TR. Pg. 16 lines 6-25, Pg. 17 lines 1-25.*
- 7. The Stipulation was authored with absolutely no input from local Government Officials, members of Advisory Committees, Advisory Council members or Full Channel TV Officials.*
- 8. The Stipulation is illegal and invalid and should not even be considered by the Administrator (Reply Brief, p. 13).*

In considering Full Channel's arguments on the I-Net "*waiver issues*," the Division has identified two distinct waiver-related issues involving Cox's compliance with Section 7.3 of the Division's Rules. One waiver issue relates to the question of whether Cox should be permitted to construct and operate an I-Net architecture in Service Area 5 that does not employ the use of a physically separate "B-cable." To facilitate a discussion on the two distinct waivers, the Division will refer to this waiver as Cox's request for a "*permanent waiver*."

The second waiver-related issue involves the question of whether the Division should accept the recommendation contained in the Stipulation filed in this docket that would allow for the granting and issuance of a Compliance Order Certificate now, without a final decision on the aforementioned B-cable permanent waiver issue. In essence, the parties to the Stipulation propose to defer the B-cable permanent waiver issue to another docket, exclusively established to address this permanent waiver issue on a statewide basis. Cox agrees to be bound by the Division's ultimate decision on the permanent waiver issue in the separate docket. This recommendation has been described as a request for a "*temporary waiver*," or deferral of the issue to another, separate docket. For purposes of this discussion, the Division will refer to this second waiver-related issue as Cox's request for a "*temporary waiver*."

First, with respect to the temporary waiver issue, the Division has determined that granting Cox a temporary waiver of Section 7.3 of the Division's Rules in Service Area 5 is appropriate under the circumstances, permitted under the Division's Rules and in the public interest, infra.

With the exception of Full Channel, the other parties in this docket have unanimously recommended that the Division defer the question of whether Cox's FSN satisfies the requirements of Section 7.3 of the Rules until a final decision is issued in contemporaneous Division Docket No. D-00-C-7. The parties have further recommended that in the event that Docket No. D-00-C-7 should still be pending one year from now, that the temporary waiver should be limited in duration to "*one*

(1) year from the date that this Compliance Order Certificate is issued to Cox” (Joint Exh. 1). The Division finds this recommendation reasonable.

Determining whether Cox’s FSN may be utilized as an alternative technology to Section 7.3’s requirement for a separate I-Net loop or “B-cable,” the “permanent waiver” issue, will require a thorough factual and legal analysis. More importantly, the issue also broadly applies to Cox’s currently authorized ten Service Areas, in addition to the proposal for Service Area 5. Accordingly, the Division finds that pragmatism and administrative economy dictate that the instant “B-cable” “permanent waiver” issue be consolidated into a single legal proceeding, designed to exhaustively address the issue on a statewide basis.

Moreover, the Division finds that neither Full Channel nor Cox’s current and potential I-net users will be prejudiced by delaying a final decision on this very profound issue. Whether the issue is addressed in this docket for Service Area 5 only, or in Docket No. D-00-C-7 for statewide application, the issue will be soon addressed and decided by the Division. Cox will be bound to the Division’s decision either way.

Full Channel asserts that by granting Cox a temporary waiver the Division will violate the State’s “level playing field” statute. Full Channel also asserts that the Division lacks authority to grant a “temporary” waiver. The Division finds no merit in Full Channel’s assertions.

Taking the latter assertion first, the Division’s Rules indicate that the Division “*may waive any provision of these rules relating to CATV systems*” (Section 1.12(a)). Before granting a waiver the Division is first required to conduct a public hearing on

the waiver request (Section 1.12(d)). Thereafter, the Division may grant the waiver request “*in whole or in part*” (*Id.*). Additionally, the Division has extremely broad powers to issue orders regarding the conduct and operations of CATV companies in furtherance of the public interest (Section 1.3).

In the instant case, Cox filed a petition seeking a temporary waiver of Section 7.3 of the Rules (Cox Exh. 13). Upon receipt, the Division conducted a duly noticed public hearing on April 5, 2001. Both the public and the parties were afforded an opportunity to offer comment and/or a position. Based on the record, the Division finds that granting Cox’s petition for a temporary waiver of 7.3 of the Rules is in the public interest. The Division also finds that no statutory prohibition exists that prevents the Division from limiting the duration of a waiver. Accordingly, the Division finds that it possesses the legal authority to grant a “temporary” waiver, and that such waiver is warranted based on the record in this docket.

The granting of a temporary waiver does not create a conflict with the State’s CATV “level playing field” statute. In this matter, the granting of a temporary waiver only provides necessary time to comprehensively adjudicate the issue of whether Cox may use its FSN throughout the State as an alternative to the physically separate I-Net loop contemplated in Section 7.3 of the Rules. The temporary waiver decision is not dispositive of the issue and, therefore, can not substantively conflict with R.I.G.L. § 39-19-3.

The Division similarly finds that R.I.G.L. § 39-19-3 does not present an obstacle to the Division’s acceptance of the Stipulation proffered in this docket. Full Channel enumerates several bases for its contention that the Stipulation submitted

by the parties contains terms and conditions “*more favorable*” and “*less burdensome*” to Cox. Full Channel further suggests that the Stipulation was negotiated and executed by the parties in violation of the law and Full Channel’s due process rights. The Division finds no merit in Full Channel’s arguments on these points.

With respect to Full Channel’s legality and due process rights issues, the Division finds that Full Channel was given adequate notice of the terms and conditions contained in the Stipulation and an opportunity to voice an opposing view. Indeed, the Division conducted a duly noticed public hearing on April 5, 2001 for the specific purpose of providing Full Channel and the public an opportunity to comment on the Stipulation. Full Channel fully participated in that hearing process, and even proffered an expert witness to offer an opinion on certain provisions contained within the Stipulation.

It is troubling to the Division that Full Channel still has difficulty understanding that the Advocacy Section is free to negotiate a settlement agreement with other parties without Full Channel’s participation or support. Full Channel raised the legality and appropriateness of such settlement discussions last year in a similar proceeding before the Division involving ABI’s application to provide CATV service in Rhode Island.³⁸ In two decisions issued in the ABI docket, the Division painstakingly explained the respective independent roles of the Division (comprised of the Hearing Officer and the Administrator) and the Advocacy Section (comprised of the Cable Section Associate Administrator and a Special Assistant Attorney

³⁸ Docket No. D-00-C-3, supra.

General) and the Advocacy Section's freedom to function as an independent party in a docket.³⁹

When acting as a party, the Advocacy Section may negotiate and execute settlement agreements like any other party. It is not necessary that all parties must execute a settlement agreement for it to have validity.⁴⁰ Further, although provided in the instant case, there is no requirement for the hearing officer to conduct a separate public hearing on any settlement he or she accepts.⁴¹ Moreover, despite Full Channel's assertions to the contrary, there is absolutely no requirement that the Advocacy Section invite all parties and/or non-parties to attend negotiation sessions.

In the ABI case, Full Channel further argued that the meetings being conducted by the Advocacy Section and the other parties, to the exclusion of Full Channel and the public, constituted a violation of the State's Open Meetings Act. In fact, Full Channel filed a complaint with the Department of Attorney General alleging such a violation. The Department of Attorney General has since issued a "finding" on Full Channel's complaint. In its finding, the Department of Attorney General concluded that the Advocacy Section does not constitute a "public body" within the meaning of the Open Meetings Act, and consequently, that no violations had taken place.⁴²

³⁹ See Order Nos. 16339 and 16438.

⁴⁰ Rule 27(b)(3) of the Division's Rules of Practice and Procedure.

⁴¹ *Id.*, Rule 27(c)

⁴² See Department of Attorney General Unofficial Finding OM01-02, issued on June 1, 2001.

In view of the aforementioned finding of the Department of Attorney General and the Division's decisions in both this docket and in last year's ABI docket, the Division trusts that Full Channel will now accept that the Advocacy Section can appropriately and legally act as an independent party, free to negotiate with one or more parties, and without public involvement. It should also be obvious that such discussions between the Advocacy Section and other parties in no way runs afoul of the State's "level playing field" statute.

Regarding the substance of the terms and conditions contained in the Stipulation and accompanying proposed Compliance Order Certificate (Joint Exh. 1, "Exhibit 1"), Full Channel contends that acceptance by the Division would place Full Channel at a competitive disadvantage. Full Channel's paramount objection and concern relates to Cox's proposal to utilize its FSN as an alternative to constructing a separate I-Net loop or "B-cable," the permanent waiver issue identified above. Full Channel contends that sparing Cox the expense of such a "B-cable" installation would result in a CATV franchise that contains regulatory obligations for Cox which are "*more favorable*" and "*less burdensome*" than the franchise obligations that Full Channel was required to accept.

In view of the fact that Rhode Island has never before witnessed two cable television companies operating in the same franchise area, the "level playing field" provisions of R.I.G.L. § 39-19-3 have never been considered by a Rhode Island Court. In short, this subject is an issue of first impression in Rhode Island. Notwithstanding, the Division will endeavor to decide the issue fairly and in a manner consistent with the relevant facts and the law.

The Division has spent considerable time reviewing the terms and conditions in issue and researching the law in order to best approach and decide the “level playing field” implications raised by Full Channel in this docket. During this exercise the Division focused primarily on the Stipulation filed by the parties and the accompanying proposed Compliance Order Certificate (Joint Exh. 1).

The parties to the Stipulation conclude that the Division can find from the evidence presented in this docket that Cox has satisfied the burden of proof required under Section 3.3(d) of the Rules and R.I.G.L. § 39-19-4, supra. As indicated in previous findings in this report and order, the Division agrees.

The parties to the Stipulation also conclude that the Division can find from the evidence presented in this docket that Cox has demonstrated that demand for access services presently warrants designating and making available two access channels in Service Area 5, in addition to the two interconnect channels required by Section 7.4 of the Rules. As indicated in previous findings, the Division agrees.

The parties to the Stipulation similarly conclude that the record supports a finding by the Division that grants Cox a “*temporary waiver*” regarding its I-Net obligations in the context of Cox’s burden of proof in the instant docket. Based on pragmatism and administrative economy considerations, the Division has agreed to defer the “permanent waiver” issue to Division Docket No. D-00-C-7, supra.

The Division has considered the above three issues in the light of Full Channel’s “level playing field” concerns and finds no possible conflicts with the provisions of R.I.G.L. § 39-19-3.

The Division next considered the fifteen terms and conditions included by the parties in the proposed Compliance Order Certificate annexed to the Stipulation. The Division's scrutiny was specifically designed to identify any term or condition that would, if adopted by the Division, be unfair or competitively harmful to Full Channel. The fifteen terms and conditions in question are summarized below:

Term and Condition ("T/C") No. "1" requires that Cox remain in compliance with all federal, State and Division laws as a condition of being franchised to operate in Service Area 5.

T/C No. "2" establishes minimum requirements for the CATV infrastructure that Cox will construct and maintain in Service Area 5.

T/C No. "3" requires that Cox provide a minimum level of programmed channels.

T/C No. "4" requires that Cox construct a network capable of transmitting service area-specific programming to the fiber node.

T/C No. "5" requires that Cox comply with all Federal Communications Commission ("FCC") signal quality standards on all of its channels. Cox is additionally required to provide proof of performance to the Division, on demand, and to remedy all signal quality deficiencies within its control.

T/C No. "6" requires that Cox construct a CATV network with an "emergency override" feature capable of overriding a designated maximum number of channels by touch-tone. Cox is required to test the feature and report the test results to the Division. This emergency alert system must fully comply with FCC and State rules.

T/C No. “7” sets forth Cox’s customer service obligations under the settlement agreement.

T/C No. “8” requires Cox to provide qualified senior citizens with the same rate discounts Cox offers in its other service areas. Cox would also be required to “*exercise its best efforts*” to maintain full participation in the industry’s “*Cable in the Classroom/ School Connections*” programs.

T/C No. “9” requires Cox to submit an annual “*Public Access*” report to the Division. The report will provide the Division with detailed information on Cox’s public access activities during the year (Report Form is attached to Joint Exh. 1, as “Exhibit A”).

T/C No. “10” requires Cox to comply with the construction timetable contained in Section 8.2(h) of the Rules, and also to endeavor to complete construction of its residential network in Service Area 5 within two years from the issue date of the relevant construction certificate.

T/C No. “11” sets forth Cox’s access channel and studio operating parameters. Specifically, Cox is (1) required to specially designate and reserve for access purposes all of the channels required to be so specially designated and reserved under Section 14.1(a) of the Rules; (2) authorized to activate and make available two access channels (a public access channel, and a combined educational/governmental access channel), in addition to the two interconnect channels required under Section 7.4 of the Rules; (3) required to offer at least one of the two access channels on the VHF spectrum; (4) authorized, pursuant to Section 14.1(f) of the Rules, to offer for lease or use those specially designated access

channels not currently activated for access purposes, subject to displacement if demand increases; (5) authorized to determine which channels shall be considered specially designated access channels and the order in which these channels will be activated pursuant to Section 14.1(d) of the Rules; (6) required to have a fully staffed and operational access studio available within six months of commencing service in Service Area 5; (7) authorized to choose the location of the studio, except if being located in an educational institution, in which case it must first be authorized by the Division; (8) may be required to cablecast Full Channel's PEG access programs; and (9) required to adopt the "*Public Access Rules and Guidelines*" previously approved by the Division in Docket No. 99-C-1.

T/C No. "12" memorializes the parties' recommendation to grant Cox a temporary waiver of Section 7.3 of the Rules in Service Area 5. It also includes Cox's commitment to be bound by the Division's decision in Docket No. D-00-C-7.⁴³

T/C No. "13" indicates Cox's willingness to exercise its best efforts to exceed the construction density requirements of Section 10.2 of the Rules.

T/C No. "14" requires that Cox post a \$75,000 construction bond in lieu of the \$25,000 construction bond required under Section 12.5 of the Rules.

T/C No. "15" provides direction on how the above-identified terms and conditions ought to be interpreted in relation to the Division's Rules.

The Division has examined the letter and substance of the fifteen terms and conditions contained in the Stipulation and finds that their collective adoption by

⁴³ Cox does reserve the right, however, to seek reconsideration or to appeal the Division's final report and order in Docket No. D-00-C-7.

the Division would not infringe on the protections afforded Full Channel under R.I.G.L. § 39-19-3.

Indeed, out of all the terms and conditions contained in the proposed Compliance Order Certificate, only T/C No. “12” required serious attention as a possible “level playing field” threat to Full Channel. However, after careful consideration the Division finds that even the “permanent waiver” issue associated with Cox’s proposal to utilize its FSN as an alternative to constructing a separate I-Net loop or “B-cable” in Service Area 5 does not create a tangible “level playing field” concern.

The Division will decide in Docket No. D-00-C-7 whether Cox will be permitted to provide I-Net service in Rhode Island through its existing FSN or if it must construct and maintain the physically separate I-Net cable network specified in Section 7.3(a) of the Rules. While the actual type of I-Net infrastructure to be built in Service Area 5 remains an open issue at this time, the Division will de facto mandate that Cox provide I-Net service in Barrington, Bristol and Warren as a condition of its franchise. As both Full Channel and Cox will be required to provide I-Net service in Service Area 5, the Division finds that the functional equivalence and parity purpose of R.I.G.L. § 39-19-3 has been reasonably satisfied.

In reaching this conclusion the Division did consider Full Channel’s argument that in order to ensure “level playing field” treatment Cox must be required to expend the financial resources necessary to construct a physically separate I-Net loop, just like Full Channel needed to do in the 1980’s. The Division cannot accept this argument.

The Division cannot agree with the notion that the Rhode Island Legislature enacted R.I.G.L. § 39-19-3 with the intention to compel the Division to “micro-manage” competing franchise authorities down to their respective line item cost for providing I-Net service. Instead, the Division interprets R.I.G.L. § 39-19-3 as a broader directive to insure that competing CATV companies are treated fairly. In other words, to insure that one CATV company is not given a competitive advantage over the other by virtue of patently partial and unbalanced regulatory treatment.

The Division has examined the package of terms and conditions being proposed for Cox and finds them to be relatively innocuous from a “level playing field” point of view. Many of the terms and conditions in question actually impose a greater financial burden on Cox than had been imposed on Full Channel (i.e., 1, 5, 6, 10, 13 and 14). Others are consistent with exceptions allowed under the Division’s Rules (i.e., 11 and 12). Taken as a complete package, the Division finds no merit in Full Channel’s “level playing field” concern and arguments.⁴⁴ The singular issue to do with the expense Full Channel incurred to construct a physically separate “B-cable” in Service Area 5 cannot vitiate the manifest fairness which permeates Cox’s proposal to provide CATV services in the towns of Barrington, Bristol and Warren.

3. Stipulation

As discussed in detail above, the Division has carefully examined the Stipulation submitted by Cox, the Advocacy Section, NECTA and the Attorney General in this docket.

⁴⁴ See Public Utility Control, 247 Conn. 95, 717 A. 2d 1276 (1998).

The Division has indicated in previous findings that it will adopt the recommendations contained in the Stipulation regarding a temporary waiver of Section 7.3 requirements under the Rules and the combining of all access programming onto two access channels.

The Division has similarly concluded that Cox is fit, willing, technically qualified and financially able to properly perform the services proposed in Service Area 5 and that Cox is able to conform to the requirements, orders and rules and regulations of the Division. The Division also agrees that the proposed operation of Cox in Service Area 5 is consistent with the public interest.

The Division additionally agrees, based on the record evidence, that the Compliance Order Certificate annexed to the Stipulation does not contain terms and conditions more favorable or less burdensome than those imposed on Full Channel. The Division also finds the terms and conditions to be in the public interest.

For the reasons stated above, and elsewhere in this Report and Order, the Division will accept the recommendations contained in the Stipulation and adopt them in toto.

4. Additional Issues

The Intervenors, and some members of the public, have raised a number of additional issues, which they assert require Division attention during the “Compliance Order Certificate” phase of the instant docket. These issues are summarized below:

- Whether the Division should undertake an investigation for the purpose of examining Cox’s past and current level of compliance with Division Rules, and

other State and federal laws, before issuing Cox another Compliance Order Certificate?

- Whether the Division ought to delay issuing Cox a Compliance Order Certificate until the Division has had an opportunity to issue a final report and order in Docket No. D-00-C-7?
- Whether the Division should delay issuing Cox a Compliance Order Certificate until the Division has reestablished and received input from the State “Cable Television Advisory Council” pursuant to Section 15.2 of the Rules?
- Whether the Division should mandate that Cox spend a specific minimum amount of funds on public access?
- Whether the Division should require Cox to provide rate discounts on telephone service and agree to not increase cable rates in the future, as a condition of granting a Compliance Order Certificate?
- Whether the Division should require Cox to add more channels to its “basic tier” programming as a condition of granting a Compliance Order Certificate?
- Whether the Division ought to impose franchise fees on CATV operators?

The Division has considered these questions, and finds that addressing them in the context of the instant docket is neither necessary nor appropriate.

Full Channel and the Attorney General both raised the question of whether Cox has fulfilled its obligations under the Rules in the Service Areas in which it currently operates. However, neither party offered any evidence that would warrant such an investigation. Full Channel’s demand for an investigation hinged almost exclusively on the “B-cable” issue. The Attorney General questioned whether Cox is providing adequate equipment and resources to its public access studios.

As discussed in previous findings contained herein, the Division will not decide the question of whether Cox must utilize a physically separate I-Net loop or “B-cable” in this docket. That issue will be decided in Docket No. D-00-C-7. Regarding

the Attorney General's concerns, the Division is satisfied with the studio equipment Cox is proposing for Service Area 5.⁴⁵ As it relates to the equipment that Cox is currently using in its other access studios, the Division will be taking up this issue in the context of a separate docket designed to update the Division's CATV Rules, which the Division is now in the process of initiating.

In conclusion, without evidence to support the requested investigation, and in view of the other dockets the Division will utilize to address the "B-cable" issue and the revisions needed to the Division's twenty year old CATV rules, the Division will deny Full Channel's and the Attorney General's request for an investigation into Cox's current compliance with the Division's Rules. The Division also finds that it is not in the public interest to delay the issuance of a Compliance Order Certificate in this docket pending the resolution of Docket No. D-00-C-7 and the Division's Rules update initiative.

The Division similarly finds that it would not be in the public interest to delay the issuance of a Compliance Order Certificate in this docket while the Division reestablishes the State Cable Television Advisory Council. This matter is unrelated to Cox's application and the burden of proof related thereto.

On the issue related to minimum funding for public access, the Division also finds this matter outside the scope of the instant proceeding. The Division plans to address this issue in the context of the rulemaking proceeding now being initiated by the Division for the purpose of updating the Rules.

⁴⁵ A list of the equipment, valued at \$289,976, was included as an attachment to the Stipulation filed in this docket (Joint Exh. 1, "Exhibit B")

With respect for the requests for discounts, augmented “basic tier” programming and franchise fees, the Division must decline to offer any findings and decisions based on a lack of subject matter jurisdiction. Federal preemptions and limitations in the Division’s statutory powers prevent any actions on these issues.

5. Full Channel’s Motions for Summary Disposition

On June 14, 2001, Full Channel filed two motions “*For Summary Disposition*” with the Division. Supporting memoranda were also provided. These motions were filed 27 days after the deadline for filing reply briefs in this docket.

Full Channel’s first motion requests that the Division dismiss the instant application, based on the various arguments raised by Full Channel during the proceedings (“Motion 1”).

The second motion seeks dismissal based on the fact that Attorney Mandl’s “Pro Hac Vice” motion was approved by the Rhode Island Supreme Court while the instant proceeding was in progress rather than prior to its outset (“Motion 2”).

Upon consideration of Full Channel’s motions, the Division finds no legal or factual basis for the requested relief. First, with respect to Full Channel’s Motion 1, Full Channel purports to file the motion pursuant to Rule 19(e) of the Division’s Rules of Practice and Procedure. However, the Division finds that Full Channel has misinterpreted the proper application of Rule 19(e). Rule 19(e) provides a pre-hearing phase opportunity for questioning the merit and legitimacy of any matter before the Division. A Rule 19(e) motion filing requires the hearing officer to make a determination as to whether “*there is no genuine issue of fact material to the decision.*” Division Rule 19(e) parallels Rule 56 of the “*Superior Court Rules of Civil*

Procedure.” Both are pre-hearing (pre-trial) motions and are unsuitable for post hearing (post-trial) relief. The Division, accordingly, must deny Motion 1 on this ground.

Furthermore, and in additional support of the denial of Motion 1, the factual and legal bases contained in Motion 1 have already been rejected by the Division as justification for any delays of this case, or for the denial of a Compliance Order Certificate. Full Channel’s arguments simply have no merit.

Motion 2 seeks a dismissal of Cox’s application based on the fact that Attorney Alan Mandl, a Massachusetts attorney, only became authorized to practice law before the Division by the Rhode Island Supreme Court on March 30, 2001. Consequently, Full Channel contends that “*these proceedings are procedurally deficient*” and, therefore, Cox’s application must be denied and dismissed.

The Division rejects Full Channel’s contention. Attorney John R. Gowell, Jr., a lawyer licensed in Rhode Island, filed a “*Motion for Admission Pro Hac Vice*” with the Division, on Attorney Mandl’s behalf, on September 18, 2000. Attorney Gowell filed the motion with the Division and not the Supreme Court, based on a longstanding practice by the Division (and the Public Utilities Commission) to accept and decide such Pro Hac Vice motion filings by out-of-state party attorneys. The Rhode Island Supreme Court had never questioned the Division’s practice regarding Pro Hac Vice motions.

A concern materialized relative to this practice after the Rhode Island Supreme Court, under the direction of a new Chief Justice, questioned a similar practice at another State agency. Predicated on the Court’s recently articulated

concern over this practice at State agencies, Mr. Mandl renewed his Pro Hac Vice motion with the Court. In response, the Court quickly issued a decision authorizing admission for the instant docket and Docket No. D-00-C-7.⁴⁶

The Division again finds that Full Channel has misinterpreted the application of Rule 19(e). Full Channel had known for months prior to Attorney Mandl's admission by the Rhode Island Supreme Court that he was appearing before the Division on behalf of Cox in a manner consistent with the Division's longstanding Pro Hac Vice admissions practice. Nevertheless, Full Channel never questioned the propriety or legality of Attorney Mandl's participation in this docket. The Division finds it unconscionable that Full Channel now asserts that "*these proceedings are procedurally deficient.*"

The Division finds it troublesome that Full Channel at this late stage, requests that Attorney Mandl's client be penalized, in the extreme, solely based on this admission issue. This action by Full Channel can be viewed as an attempt to stifle competitive choice for their customers and raises suspicions concerning Full Channel's understanding of the meaning of "*public interest.*"

In conclusion, the Division finds that Full Channel's Motion 2 must be denied for the foregoing reasons. The Division also finds that no prejudice has befallen Full Channel as a consequence of the Supreme Court's more active stance regarding the practice of law before State agencies. The Division further finds that the public interest will clearly not be served by the suggested dismissal of Cox's application.

⁴⁶ Rhode Island Court Order No. 01-131-A

6. **CONCLUSION**

In conclusion, the Division finds that Cox has substantially satisfied its burden of proof relative to the issuance of a Compliance Order Certificate.

Further, the Division finds that Cox has met its burden under Section 14.1(e) of the Rules and may activate two PEG access channels as provided in the Stipulation. The Division will also grant Cox a temporary waiver of Section 7.3(a)'s requirements for a physically separate I-Net loop or "B-cable," as provided in the Stipulation. Finally, based on the findings contained herein, the Division will approve the Compliance Order Certificate attached to the Stipulation.

Now, Accordingly, it is

(16646) **ORDERED**:

1. That the April 20, 2000 application filing of CoxCom, Inc., seeking a Compliance Order Certificate for authority to construct and operate a competitive Community Antenna Television System in Rhode Island's CATV Service Area 5, is hereby granted.
2. The Compliance Order Certificate approved herein is attached to this Report and Order as "Appendix 2," and is incorporated by reference.
3. That CoxCom, Inc.'s amended request to initially combine public, educational, governmental, leased and "other" access programming on to two access channels, as discussed herein, is hereby approved.
4. That CoxCom, Inc.'s amended petition for a temporary waiver of certain Rule 7.3(a) requirements relating to Institutional/Industrial Networks, as discussed herein, is hereby approved.

5. That the Stipulation filed in this docket by CoxCom, Inc., the Department of Attorney General, NECTA and the Advocacy Section is hereby approved.
6. That the proposed Compliance Order Certificate contained in the aforementioned Stipulation, is hereby approved and adopted.
7. That Full Channel TV, Inc.'s two motions for summary disposition as discussed herein, are hereby denied and rejected.
8. Pursuant to Section 3.3(e) of the Rules, CoxCom, Inc. shall indicate in writing whether it will accept or decline the Compliance Order Certificate approved by and issued through this Report and Order within thirty (30) days. In the event that CoxCom, Inc. fails to accept the Compliance Order Certificate within the required time, CoxCom, Inc. shall be deemed to have rejected and repudiated the certificate and thereafter shall have no rights, remedies or redress to said authority.
9. CoxCom, Inc. shall also comply with the relevant timetable mandated in Section 8 of the Rules.

Dated and Effective at Warwick, Rhode Island on June 26, 2001.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator